

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF:

Phase II Distribution
of the 2004-2009
Cable Royalty Funds

:
:
:Docket No.
:2012-6
:
:CRB CD
:2004-09
:(Phase II)
:

IN THE MATTER OF:

Phase II Distribution
of the 1999-2009
Satellite Royalty Funds

:
:
:Docket No.
:2012-7
:
:CRB SD
:1999-2009
:(Phase II)
:

Volume 3

Wednesday,
December 10, 2014

Room LM-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC

The above-entitled matter came on for
hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

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P-R-O-C-E-E-D-I-N-G-S

9:17 a.m.

JUDGE BARRETT: Please be seated.

We beg your pardon for the late start.

All that animated discussion in the judges' room was an economics lecture.

(Laughter.)

Mr. Boydston, you were examining Ms. Vernon, I believe.

MR. BOYDSTON: I was, Your Honor.

And I ask Ms. Vernon if she would take the stand.

In addition to that, I thought before we get started I was going to hand out the Exhibit 122, which I have already done, to counsel. And I have three copies here. Shall I go ahead and do that?

JUDGE BARRETT: Is that the one that we asked you to try to get legible copies of?

MR. BOYDSTON: No, this is the one that we didn't have all together. Well, we had one copy and we found a few of those and we got a

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1 whole bunch of paper.

2 JUDGE BARRETT: Understood.

3 MR. BOYDSTON: By my estimate, in the
4 way we originally delivered these things, it
5 should fit in your Volume 4 box.

6 JUDGE BARRETT: Thank you.

7 We will take the copies, but give
8 counsel an opportunity to look through it before
9 you have to accept or reject.

10 MR. BOYDSTON: Right.

11 MR. MacLEAN: Your Honor, this is on
12 a different topic. But, while we are kind of
13 setting up here, I just wanted to make the judges
14 aware. I have a status conference with another
15 court, a telephonic status conference, at 12:30
16 today. I scheduled it at 12:30, so that we knew
17 it would fall within the lunch break.

18 I only bring it up to request that
19 today we either take our lunch break promptly at
20 12:00, so I have a chance to get a bite to eat
21 before that, or wait until 12:30, closer to
22 12:30, so I can eat afterwards.

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1 JUDGE BARRETT: You're not a real
2 lawyer, are you?

3 (Laughter.)

4 Certainly. Thank you, Mr. MacLean.

5 For the interest of those who are
6 counting, yesterday we recorded an hour and 35
7 minutes for MPAA, which means MPAA has used a
8 total of three hours and seven minutes. We
9 recorded two hours and 43 minutes for IPG, which
10 brings their total up, two-day total to five
11 hours, 22 minutes. And we recorded 43 minutes
12 for SDC, which brings their two-day total to 58
13 minutes. And we assume we are in the same
14 universe of discourse on that, and if we are way
15 off, let us know.

16 MR. BOYDSTON: Your Honor --

17 JUDGE BARRETT: Mr. Boydston.

18 JUDGE BARRETT: -- one other
19 housekeeping matter. In reviewing documents last
20 night, in my binders there was a discrepancy.
21 And I checked with counsel; they don't have the
22 discrepancy, and the record does not have the

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1 discrepancy. So, I'm assuming you don't, but I
2 would check real quick.

3 JUDGE BARRETT: Okay.

4 MR. BOYDSTON: This is Exhibit 76 and
5 77, which I believe should be in Volume 3 or 4 of
6 the ones you got.

7 JUDGE STRICKLER: Two.

8 MR. BOYDSTON: Well, it could be in 2.

9 JUDGE STRICKLER: It basically exists
10 amongst all those volumes.

11 (Laughter.)

12 MR. BOYDSTON: Well, in the press at
13 the end, we were using different sized binders at
14 times.

15 The discrepancy is that in 76 it
16 should be a very short declaration by Chandra
17 Winford, and 77 should be a declaration of Miles
18 Woodlief. You can see his picture at the front.
19 And if that is the way you have it, good. That
20 means there was only one mistake made in my
21 binder, which is the best place to make it.

22 JUDGE BARRETT: Mine are in conformity

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1 with what you described.

2 MR. BOYDSTON: Good.

3 JUDGE STRICKLER: Seventy-seven should
4 be what?

5 MR. BOYDSTON: Miles Woodlief, and you
6 have his picture there.

7 JUDGE BARRETT: It says "Benny Hinn"
8 at the bottom.

9 JUDGE STRICKLER: It says "Benny"
10 here, but that's not a picture of Benny Hinn.

11 MR. BOYDSTON: Yes.

12 JUDGE STRICKLER: That is a picture of
13 --

14 MR. BOYDSTON: Excellent point. That
15 is not Mr. Woodlief. That is Mr. Hinn.

16 JUDGE STRICKLER: Okay. I don't know
17 them, but I will take your word for it.

18 (Laughter.)

19 MR. BOYDSTON: And, Judge Feder,
20 you're okay with that?

21 JUDGE FEDER: Seventy-six, Winford?

22 MR. BOYDSTON: Yes.

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1 JUDGE FEDER: Seventy-seven, Woodlief.
2 That's correct.

3 MR. BOYDSTON: Very good. As I said,
4 the best place for a mistake is in my copy, and
5 that's where it was.

6 Thank you, Your Honor.

7 WHEREUPON,

8 DENISE VERNON

9 having been called for examination by Counsel for
10 the IPG, and having been previously duly sworn,
11 resumed the witness stand, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BOYDSTON:

15 Q Ms. Vernon, when we broke yesterday,
16 we were looking at Exhibit 113. And that
17 appeared to be another letter that you had sent
18 out to IPG claimants. And I had noted that the
19 first sentence essentially said, "Last night we
20 erringly sent you an email," et cetera.

21 I would ask you if you recall the
22 circumstances of this letter.

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1 A Yes. As the letter says, we erringly
2 stated that you had not responded to our prior
3 emails, but that was not the case for a lot of
4 them, because, like I had testified before, we
5 had sent them the list, the Excel spreadsheet, of
6 the satellite programming list at that time. And
7 then, after that point, then we had gotten the
8 data, the program list, for the cable programs.
9 So, that is what we were sending out at this
10 time. And so, some of them had already responded
11 with identifying their programs with regard to
12 satellite. And then, now we were sending them
13 the cable programs for that period of time.

14 Q I'm not asking for a specific number,
15 but, in general, I believe there are several
16 hundred different claimants. Is that accurate?

17 A That is accurate, yes.

18 Q And have you personally dealt with
19 most of them?

20 A Quite a few, yes.

21 Q And so, I imagine it is a fairly big
22 job.

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1 A It's a very big job, yes. And like I
2 said, it becomes even bigger when you're trying
3 to explain how to work an Excel spreadsheet.

4 Q And I imagine some of the claimants
5 don't have familiarity with some of these things?

6 A No.

7 Q And --

8 A Yes, and some of them do. Some of
9 them are great, you know, very tech-savvy or it
10 is a bigger company, you know, or something else.
11 So, they have people that will go through and do
12 it and identify the programs like we would like
13 to have them done. So, everything we have is
14 consistent.

15 Q In a situation where someone isn't
16 familiar with something like an Excel
17 spreadsheet, is it, then, incumbent on you to
18 sort of hold their hand through the process of
19 working with those?

20 A Yes. You know, if they have any
21 ability at all, then a lot of times I can just
22 walk them through it, yes. But, if it is clear

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1 that there is no way they are getting this, then
2 I tell them, you know, "Send me what you have.
3 Do you have a catalog list?", you know, a file.
4 Some of them just have a few shows and things
5 like that. "Or you can email me your list of
6 program titles, and we'll put it in, whatever is
7 easier for you."

8 Q Are you familiar with Mr. Adler of
9 Adler and --

10 A Yes, Larry Adler, uh-hum

11 Q And have you had personal
12 communications with him?

13 A Yes, quite a few times. Yes, he is
14 a very nice man. From the last proceedings and
15 these proceedings -- well, and in between,
16 because I have told him -- you know, he is very
17 familiar. He has been around for a while and he
18 knows how the proceedings work and the different
19 phases, and that sort of thing.

20 So, we chat and I tell him what's
21 going on, give him the background. You know,
22 this is an appeal. This is when these

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1 proceedings are starting up, and that sort of
2 thing. And he lives in, I believe it is
3 Maryland. So, it's not that far from here.

4 And he always tells me what museums I
5 should see and what restaurants I should go to
6 while I'm in D.C., because I have so much free
7 time when I'm here.

8 (Laughter.)

9 So, yes, he's very nice.

10 Q And are you familiar with Maureen
11 Millen? Have you communicated with her?

12 A Yes. Matter of fact, for the 2000
13 proceedings, when we started this last one, then
14 I was actually the first one that contacted her
15 when we were trying to find all the clients. You
16 know, because it had been so long since there had
17 been any phase 2 proceedings, that people had
18 moved; addressed had changed; personnel had
19 changed, that sort of thing.

20 So, you know, Raul and I went through
21 all of the boxes and tried to get contact
22 information. And we both started trying to hunt

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1 people down, you know, see who was there, what
2 company, and everything else at that time.

3 And it took me a long time to find
4 Maureen with IWV. And once I did find her -- and
5 so, I utilized a whole lot of things, IMDB Pro.
6 There's people that I found by going to the
7 Secretary of State, you know, websites in the
8 various states, to see if contact information, if
9 they were still in business, that sort of thing.

10 And when I finally did find Maureen,
11 then I know Raul had left messages. I found a
12 cell number for her. Raul had left messages. I
13 had left messages. And then, she finally called
14 me back, and her story was just unbelievable.

15 I told her what was going on, you know
16 --

17 MR. MacLEAN: Objection.

18 THE WITNESS: -- that the proceedings
19 were finally starting.

20 MR. MacLEAN: This is getting
21 narrative. The question was, are you familiar
22 with Maureen Millen and have you communicated

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1 with her.

2 THE WITNESS: Okay.

3 JUDGE BARRETT: Sustained.

4 BY MR. BOYDSTON:

5 Q You have now explained that you
6 finally were able to get a number for Ms. Millen
7 and you called her, and she told you certain
8 things had happened in her life that had delayed
9 her response. And what were those things?

10 A There was a long list. One, she had
11 been in a horrible car accident, lots of
12 surgeries --

13 MR. MacLEAN: Objection. Hearsay.
14 And also, I believe that Ms. Millen's declaration
15 as to this aspect is already in evidence.

16 MR. BOYDSTON: I don't think she had
17 mentioned the reason why she delayed a response.

18 JUDGE BARRETT: Is it relevant, Mr.
19 Boydston?

20 MR. BOYDSTON: Well, I just wanted to
21 explain --

22 COURT REPORTER: I'm sorry, ma'am, can

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1 you repeat that, please?

2 JUDGE BARRETT: Yes. I asked Mr.
3 Boydston is it relevant.

4 MR. BOYDSTON: It just explains why --
5 this is part of the reason why Maureen Millen,
6 there was no contract for her that anyone had.
7 And you'll recall there was a lot of cross-
8 examination about the fact that she requested
9 that a contract, her original contract, be
10 essentially recreated and dated.

11 JUDGE BARRETT: Thank you.

12 Overruled.

13 THE WITNESS: I'll try to make it
14 short.

15 Car accident. While she was in
16 recovery, her trusted assistant, basically,
17 embezzled all her money. Husband died.
18 Hurricane Ike, lost her house. And it was just a
19 series of events.

20 And I believe that when Raul testified
21 the other day, that her situation was such a
22 unique situation, it was because of that. And

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1 that is why she didn't have a copy of the
2 contract. We didn't have a copy of the contract
3 because Marian Oshita had not given us any of the
4 records.

5 And I explained that to her, you know,
6 but she remembers Marian and doing all of that.
7 So, that was the reason her response had been so
8 delayed and it took us so long to get everything
9 together for Maureen.

10 BY MR. BOYDSTON:

11 Q And did Ms. Millen volunteer to you
12 that she recalled Marian Oshita didn't sign the
13 contract?

14 A Yes, she remembered everything about
15 it.

16 MR. BOYDSTON: Nothing further, Your
17 Honor.

18 JUDGE BARRETT: Could you just pull
19 that microphone a little bit closer to you?

20 THE WITNESS: There? Uh-hum. Okay?

21 JUDGE BARRETT: That probably will
22 help. Thank you.

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1 MR. BOYDSTON: I have nothing further,
2 Your Honor.

3 JUDGE BARRETT: Thank you, Mr.
4 Boydston.

5 Mr. Olaniran?

6 MR. BOYDSTON: Oh, I beg your pardon,
7 Your Honor. I wanted to move that Exhibit 113 be
8 entered into evidence. That was the last letter
9 that I started with this morning.

10 MS. PLOVNICK: No objection.

11 MR. MacLEAN: No objection from the
12 SDC.

13 JUDGE BARRETT: Exhibit 113 is
14 admitted.

15 MR. BOYDSTON: Thank you, Your Honor.

16 [Whereupon, the document marked as
17 IPG Exhibit No. 113 for
18 identification was received in
19 evidence.]

20 CROSS-EXAMINATION

21 BY MR. OLANIRAN:

22 Q Good morning, Ms. Vernon. My name is

1 Greg Olaniran. I'm counsel for MPAA.

2 You stated, I think yesterday, that
3 you are the owner of IPG?

4 A This is correct.

5 Q Okay. And 100 percent owner or --

6 A Ninety-nine percent.

7 Q Ninety-nine percent?

8 A Yes.

9 Q And I think the 1 percent is held by
10 your mother, is that correct?

11 A That's correct.

12 Q Okay. And what are your
13 responsibilities as owner?

14 A Well, a variety of things. Like I
15 said, I deal a lot with the claimants. I try to
16 get programming information, go through lots and
17 lots of paperwork, correspond through email, go
18 through filings; basically, work jointly with
19 Raul. Let's see, accounting information,
20 banking, all over the place.

21 Q Okay. And you acquired interest in
22 IPG in March of 2005, is that correct?

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1 A That's correct.

2 Q And prior to your acquisition of
3 interest, you didn't have any involvement
4 whatsoever in IPG? Is that --

5 A No, I did not.

6 Q Okay. And, in fact, in prior
7 testimony, I think it was, when I asked you about
8 how you were able to determine what had gone on
9 in IPG prior to your acquisition, you responded,
10 and I quote, "Just from what Raul Galaz had told
11 me." Do you remember that?

12 A I'm not sure, but if it's testimony --
13 the deposition that we were in that time in
14 California?

15 Q Yes.

16 A Okay. Yes. Yes, yes.

17 Q Okay.

18 A Yes, that would be, yes, correct.

19 Q So, that is how you acquired most of
20 what you knew, at least upon joining IPG, right?

21 A Yes. At that time, yes.

22 Q Okay.

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1 A Yes.

2 Q And you didn't interact with claimants
3 before --

4 A Before that? No.

5 Q -- before that? No?

6 A Not at all.

7 Q And no correspondence, no telephone
8 calls, or any of that sort of thing?

9 A Nothing before that time.

10 Q Okay. So, with respect to claims that
11 were filed before you acquired your interest in
12 IPG, you had no personal knowledge of the
13 veracity of those claims, is that correct?

14 A That's correct.

15 Q Okay.

16 A Yes.

17 Q And you just mentioned Ms. Oshita a
18 few minutes ago in connection with Ms. Millen.
19 And you stated that Ms. Oshita had not provided
20 you the contract, may not have provided you with
21 the contract that IPG had with Ms. Millen.

22 And to the extent that that is true,

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1 it would also be the case that she had
2 termination letters that she had. She may not
3 have produced some of those, too, correct?

4 A Oh, certainly. Yes, we have no idea
5 what she has or has not.

6 Q Okay. And you have been involved with
7 filing of IPG's claims, correct?

8 A Correct.

9 Q Yes. Are you have trouble hearing me?

10 A Yes.

11 Q Okay.

12 A A little bit.

13 Q My voice is a little bit low. I'll
14 try to do better. Sorry about that.

15 In fact, you have been signing all of
16 IPG's claim, I think, since about the 2007
17 royalty year, correct?

18 A I believe so, yes.

19 Q Okay. And those were all joint
20 claims, correct?

21 A Yes.

22 Q Okay. And with the signature on each

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1 joint claim, you're certifying under the penalty
2 of perjury that IPG is the duly-authorized agent
3 for each claimant on each joint claim, correct?

4 A That's correct.

5 Q And before you sign each joint claim,
6 you make sure that IPG does have authority to
7 represent each claimant listed on each joint
8 claim, correct?

9 A Correct.

10 Q Okay. And you have done so since you
11 have been signing IPG's claims since 2007,
12 correct?

13 A Correct.

14 Q Okay. And you make absolutely certain
15 that IPG has authority to represent each claimant
16 on each joint claims, right?

17 A Yes.

18 Q Okay.

19 A Yes.

20 JUDGE FEDER: Excuse me, please.

21 THE WITNESS: I'm sorry.

22 JUDGE FEDER: Just to clarify, earlier

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1 had said 2007 claim year and, then, you said
2 2007. Are you talking about claims filed in 2007
3 for 2006 or a filing made for 2007?

4 MR. OLANIRAN: Fair point.
5 Clarifying, Your Honor, I hope she was responding
6 to the fact that she filed for IPG for the
7 beginning of the 2007 royalty year.

8 BY MR. OLANIRAN:

9 Q Is that correct? You began filing for
10 IPG --

11 A Correct, yes, if I understand you.

12 Q Do you understand that question?

13 A Yes. Yes, I do.

14 Q Okay.

15 JUDGE BARRETT: That would be July
16 2008?

17 THE WITNESS: Yes, right.

18 MR. OLANIRAN: Okay.

19 THE WITNESS: Yes.

20 MR. OLANIRAN: Thank you, Your Honor.

21 BY MR. OLANIRAN:

22 Q And is it fair to say that in more

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1 recent times you have become more careful of your
2 duties with respect to filing claims because of
3 all of the various challenges that have been
4 raised IPG's representation of authority?

5 A Oh, most certainly.

6 Q Okay.

7 A Yes.

8 Q And with such extra attention to your
9 filings, we should not find a claimant on any of
10 IPG's joint claims that IPG does not have an
11 authority to represent, is that right?

12 A Not to my knowledge.

13 Q Okay. And would you please turn to
14 Exhibit, premarked it as 307 of the MPAA binder?

15 MR. BOYDSTON: Your Honor, this is not
16 in evidence, and we had objected to it previously
17 because Feed the Children is not involved in this
18 matter and really has no place here.

19 JUDGE BARRETT: It hasn't been offered
20 into evidence, either, Mr. Boydston.

21 MR. BOYDSTON: Well, in the previous
22 exhibits we haven't allowed questioning where the

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1 document wasn't entered.

2 JUDGE BARRETT: Well, he hasn't asked
3 a question yet. He just asked her to look at the
4 exhibit. That's all we're doing right now.

5 MR. BOYDSTON: Fair enough.

6 THE WITNESS: Yes, I've found it.

7 BY MR. OLANIRAN:

8 Q Will you please take a few seconds
9 just to flip through the document, just to
10 familiarize yourself with it?

11 (Witness looks at document.)

12 A Do you want me to read the whole
13 thing?

14 Q No. I just wanted to make sure. I
15 think we're fine now, right?

16 A Okay.

17 Q Now do you recognize the document?

18 A Yes, I had seen it when you guys
19 provided it.

20 Q Okay. So, you've had a chance to read
21 it?

22 A Yes.

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1 Q Okay.

2 A Briefly.

3 Q Would you please tell us what the
4 document is?

5 MR. BOYDSTON: Your Honor, I object.
6 This doesn't respond to anything that was in the
7 direct examination whatsoever. And on top of
8 that, it's not relevant. It is outside the scope
9 and it is not relevant. That is my objection.

10 JUDGE BARRETT: Overruled.

11 MR. BOYDSTON: Well, Your Honor, I
12 mean, it is not -- I ask no questions on this.

13 JUDGE BARRETT: Mr. Boydston, we don't
14 even know what the line of questioning is yet.
15 It's just a document that has been identified.
16 Can you let Mr. Olaniran ask a question before
17 you object?

18 THE WITNESS: It's a Notice of
19 Termination.

20 BY MR. OLANIRAN:

21 Q And a Notice of Termination --

22 A Of November 25th, 2014. So, not that

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1 long ago.

2 JUDGE BARRETT: I'm sorry, my 307 is
3 -- yes, it is in the form of a pleading. Are we
4 looking at the same thing?

5 MR. OLANIRAN: Yes, we are.

6 JUDGE BARRETT: Okay. All right. Go
7 ahead.

8 BY MR. OLANIRAN:

9 Q I'm sorry, I don't know if I cut you
10 off or not. You said it was a notice?

11 A Yes. Yes, I said it's a Notice of
12 Termination dated November 25th, 2014.

13 Q And it is a pleading that was filed
14 with the judges, correct?

15 A Correct. It looks like it.

16 Q Okay. And who filed that pleading?

17 MR. BOYDSTON: Objection, Your Honor.
18 That calls for speculation. She didn't file it,
19 unless he must establish that.

20 JUDGE BARRETT: Sustained.

21 BY MR. OLANIRAN:

22 Q Can you tell from reviewing the

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1 document who filed the pleading?

2 MR. BOYDSTON: Objection, Your Honor.
3 The document would speak for itself. We don't
4 need her comment.

5 JUDGE BARRETT: Sustained.

6 BY MR. OLANIRAN:

7 Q Do you know if your counsel was served
8 with a copy of that document?

9 MR. BOYDSTON: Objection, Your Honor.
10 Again, speculation. How would she know what I
11 have been served with?

12 JUDGE BARRETT: Overruled.

13 THE WITNESS: No, I don't know.

14 BY MR. OLANIRAN:

15 Q Would you please go to the last page,
16 page 8 of the filed document itself?

17 MR. BOYDSTON: Your Honor, I'll
18 stipulate I was served with this.

19 JUDGE BARRETT: Thank you.

20 MR. OLANIRAN: Your Honor, I would
21 like for admission of Exhibit 307 as a public
22 record.

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1 MR. BOYDSTON: Objection. No. 1, it
2 is beyond the scope. No. 2, it's not relevant to
3 this proceeding. There is no claim for this
4 entity in this proceeding, and I don't see what
5 its relevance is.

6 MR. OLANIRAN: It's impeachment, Your
7 Honor.

8 MR. BOYDSTON: I don't know who it is
9 impeaching.

10 JUDGE BARRETT: Well, it can only be
11 impeaching the witness who is on the stand, or
12 attempting to do so.

13 MR. BOYDSTON: And I don't see how it
14 impeaches anything that Ms. Vernon just said.

15 JUDGE BARRETT: We don't know that
16 yet, do we, because we haven't heard any
17 questions about it?

18 MR. BOYDSTON: Fair enough. For
19 impeachment, that doesn't overcome the objection
20 for relevance necessarily.

21 JUDGE BARRETT: Overruled.

22 MR. BOYDSTON: I mean, there might be

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1 an offer of proof as to why it's relevant to
2 impeach.

3 JUDGE BARRETT: Overruled.

4 Go ahead.

5 THE WITNESS: I'm not sure exactly
6 what page you are talking about. The last page
7 of 307 or --

8 BY MR. OLANIRAN:

9 Q That's fine, Ms. Vernon. Mr. Boydston
10 stipulated that he was served --

11 A Oh, okay.

12 Q -- with the document.

13 MR. MacLEAN: Your Honor, I apologize.
14 I wasn't clear. Is 307 admitted into evidence?

15 JUDGE BARRETT: Not yet.

16 MR. MacLEAN: I thought that Mr.
17 Olaniran --

18 MR. OLANIRAN: I did move it, move for
19 admission.

20 MR. MacLEAN: -- had moved it into
21 evidence, and that you overruled the objection.

22 JUDGE BARRETT: Oh, so I did. So I

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1 did. 307 is admitted.

2 MR. OLANIRAN: Thank you, Your Honor.

3 MR. BOYDSTON: Your Honor, just so I
4 am clear on the record, I have two objections or
5 I have two bases for both of those objections.

6 One, it is irrelevant because this
7 entity is not a party to this action.

8 JUDGE BARRETT: Understood.

9 MR. BOYDSTON: And two, I don't
10 remember what two was. But, for that one, I
11 think you did the ruling.

12 Well, I guess I would put it this way:
13 I object because this essentially just like a
14 character witness in that they have no connection
15 to this action whatsoever. It would be no
16 different than if they found IPG's landlord and
17 brought the landlord in to say, "IPG is late on
18 its rent."

19 I mean, it's got no connection to
20 these claims at issue. So, I don't see how it is
21 relevant. That's my objection.

22 JUDGE BARRETT: Overruled.

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1 MR. OLANIRAN: Thank you, Your Honor.

2 [Whereupon, the document marked as
3 MPAA Exhibit No. 307 for
4 identification was received in
5 evidence.]

6 BY MR. OLANIRAN:

7 Q Now, Ms. Vernon, Feed the Children has
8 been an IPG claimant both years, is that correct?

9 A Yes.

10 Q And just in general -- and tell me if
11 you understand this -- this document seeks to
12 replace IPG with MPAA for representation in the
13 course of this proceeding, is that right?

14 A That's my understanding of the
15 document.

16 Q Okay. And I want you to flip a few
17 pages forward until you get to the affidavit by
18 Travis Arnold. Do you see that?

19 A One second.

20 MR. BOYDSTON: I'm sorry, what was the
21 reference?

22 MR. OLANIRAN: Travis Arnold's

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1 affidavit.

2 JUDGE BARRETT: For the record, it is
3 entitled, "Declaration". Are we talking about
4 the same document, declaration of Travis Arnold?

5 MR. OLANIRAN: I'm sorry, it's the
6 declaration of Travis Arnold.

7 THE WITNESS: Yes, I'm there.

8 BY MR. OLANIRAN:

9 Q Okay. And then, just flip about four
10 pages forward to Exhibit 1 to that declaration.
11 Are you there?

12 A Just a second. Okay.

13 Q And Exhibit 1 to that declaration is
14 an email that's dated July 1st, 2014, from a Mary
15 Rasenberger. It's to several people. Do you see
16 that?

17 A Uh-hum.

18 Q And the email recipient includes
19 Worldwide SG and Mr. Boydston. Do you see that?

20 A Yes, I do.

21 Q Now who is Mary Rasenberger? Do you
22 know?

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1 A She is one of the attorneys for Feed
2 the Children now. I don't know how long she has
3 been on, but she's there with them now.

4 Q Okay. So, she sent an email to at
5 least you and Mr. Boydston, among others,
6 correct?

7 A Pardon me?

8 Q She sent this email to you and Mr.
9 Boydston, among people, correct?

10 A Well, it's actually sent to Raul and
11 Brian, but it's sent on our website.

12 Q This is the official email for IPG, is
13 it not?

14 A Yes, it's the email address.

15 Q Okay.

16 A Yes.

17 Q Okay. And would you please read the
18 text of that email into the record, please?

19 A "Dear Brian and Raul,

20 "We are writing on behalf of Feed the
21 Children to formally notify you that FTC has
22 elected to terminate Independent Producers

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1 Group's representation of FTC, including under
2 the mandate agreement signed by Larri Sue Jones
3 on July 16th, 2001, and the extension agreement
4 signed by her on May 20th, 2002 (collectively,
5 the mandate agreement). Accordingly, we request
6 that IPG refrain from filing any claim on behalf
7 of FTC for any retransmission royalties for the
8 2013 calendar year or for any future years.

9 "The foregoing is not intended to be
10 an acknowledgment or ratification of the validity
11 of the mandate agreement or any other agreement
12 between FTC and IPG, nor is it intended to be a
13 full statement of my client's positions, rights,
14 or remedies, all of which FTC expressly
15 reserves."

16 Q Okay. Thank you.

17 A "Best, Mary". Sorry.

18 Q Okay. Now so, this email does two
19 things. First, it terminates IPG's
20 representation of Feed the Children as of July
21 1st, correct?

22 MR. BOYDSTON: Objection, Your Honor.

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1 That calls for a legal conclusion as to whether
2 or not it is, in fact, a termination or not.

3 JUDGE BARRETT: Sustained.

4 BY MR. OLANIRAN:

5 Q What is your understanding of what
6 this email does?

7 A Well, it tells me she's attempting to
8 terminate.

9 Q You don't think she's actually
10 terminating, if I understand what you are saying,
11 correct?

12 MR. BOYDSTON: Objection, Your Honor.
13 He is trying to get her to make a legal
14 conclusion. She said what she thinks it says,
15 and I think that is a sufficient answer.

16 BY MR. OLANIRAN:

17 Q What else, is there anything else you
18 think she is doing with this email besides
19 attempting to terminate IPG?

20 A Trying to effect something, putting us
21 on notice. I'm not sure.

22 Q Okay. Do you --

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1 A I don't know what you're going for.

2 Q I'm sorry. Did you finish? I'm
3 sorry, I may have cut you off. Okay.

4 Do you think it also directs IPG not
5 to file any claims on behalf of Feed the Children
6 for 2013 and future years?

7 A For 2013?

8 Q I'm sorry, for the 2013 royalty year
9 and going forward.

10 A Possibly. I mean, it's dated July
11 1st, 2014. Honestly, well, yes, I mean, you
12 know, she says 2013 or prospectively.

13 Q I'm not sure --

14 A In her email she says 2013.

15 Q When are the claims for the 2013
16 royalty year due? Or when were they due to be
17 filed?

18 A In 2014, July 2014.

19 Q Okay.

20 A Yes.

21 Q And so --

22 A That month.

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1 Q So, you would have filed in July 2014

2 --

3 A Correct.

4 Q -- the claims for the 2013 royalty
5 years?

6 A Correct.

7 Q And she's directing you here, is she
8 not, that you not file for Feed the Children a
9 claim for the 2013 royalty year?

10 A That is correct.

11 Q Okay. Thank you.

12 And IPG did not produce this
13 termination, this email, in discovery, did it?

14 A I don't know.

15 Q Do you know whether, after the email
16 was received, it was produced, even if it was
17 after discovery?

18 A No, I don't, but --

19 Q You don't know if it was produced at
20 all to either SDC or MPAA?

21 A I do not know.

22 Q Okay.

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1 MR. OLANIRAN: Approach, Your Honor?

2 JUDGE BARRETT: You may.

3 BY MR. OLANIRAN:

4 Q Ms. Vernon, I have just provided you
5 with the document premarked --

6 MR. BOYDSTON: Your Honor, if I may,
7 we'll stipulate that IPG filed July claims in
8 2014 for the 2013 year on behalf of Feed the
9 Children. It's not in dispute.

10 JUDGE BARRETT: Okay. Thank you.

11 MR. MacLEAN: Your Honor?

12 JUDGE BARRETT: Mr. MacLean?

13 MR. MacLEAN: I will not agree to that
14 stipulation.

15 JUDGE BARRETT: Okay. Do you want to
16 inquire further since Mr. Olaniran, his point
17 seems to have been made?

18 MR. MacLEAN: Your Honor, if this is
19 a point that Mr. Olaniran would like to make,
20 then I would ask that it be made based on
21 documents in evidence, rather than by
22 stipulation.

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1 MR. BOYDSTON: Your Honor, I object.
2 That's silly. Your Honor, I actually --

3 JUDGE BARRETT: That's not a legal
4 basis for an objection, unfortunately, Mr.
5 Boydston.

6 MR. OLANIRAN: Just a quick response,
7 Your Honor. I would actually prefer to have the
8 document omitted into evidence.

9 JUDGE BARRETT: You may offer it, once
10 it's identified and marked.

11 What's the next number?

12 JUDGE BARRETT: The next number, we
13 may need to ask the clerk.

14 THE CLERK: 356 and 357 then.

15 JUDGE BARRETT: Which do you want to
16 be which?

17 MR. OLANIRAN: I am just going to go
18 back to that --

19 JUDGE BARRETT: Oh, as one, one
20 number?

21 MR. OLANIRAN: No, two numbers.

22 MS. PLOVNICK: So, let's call the

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1 cable claim 356 and the satellite 357 then.

2 JUDGE STRICKLER: Okay, who was 356?

3 MS. PLOVNICK: Cable is 356; satellite
4 is 357. Cable is 356; satellite is 357, and we
5 are going to get the clerk stickers on those
6 right now.

7 JUDGE BARRETT: You have the copies?

8 [Whereupon, the documents
9 were marked as MPAA Exhibit
10 Nos. 356 and 357 for
11 identification.]

12 JUDGE BARRETT: Here you are, Ms.
13 Vernon. These have the clerk's sticker on them.

14 THE WITNESS: Okay.

15 BY MR. OLANIRAN:

16 Q Ms. Vernon, do you have in front of
17 you Exhibit premarked as Exhibit No. 356?

18 A Uh-hum.

19 Q And could you please identify that
20 exhibit for the record?

21 A Joint Claim for Cable Retransmission
22 Royalty Fees, 2013.

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1 Q Okay. And that is true and correct
2 copy of the joint claim you filed on IPG's behalf
3 on July 31, 2014 for the 2013 cable royalty year,
4 correct?

5 A Correct.

6 Q Whose handwritten notes are on that
7 document?

8 A Those are Raul's, Raul's writing.

9 MR. OLANIRAN: I move to admit Exhibit
10 356, IPG's joint claim for cable royalty fees for
11 2013.

12 MR. MacLEAN: No objection, Your
13 Honors.

14 MR. BOYDSTON: No objection.

15 JUDGE BARRETT: 356 is admitted.

16 [Whereupon, the document marked as
17 MPAA Exhibit No. 356 for
18 identification was received in
19 evidence.]

20 JUDGE BARRETT: May I ask, Ms. Vernon,
21 you said the handwritten notes are Mr. Galaz's
22 notes, but do you mean filling in the blanks is

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1 his handwriting or the handwritten notes that are
2 in boxes in the margins?

3 THE WITNESS: Well, some of it is his
4 on some of these other things, because I had
5 input in the stations, but definitely the boxes
6 are his.

7 JUDGE BARRETT: Okay, thank you.

8 BY MR. OLANIRAN:

9 Q And, Ms. Vernon, let's --

10 A But the signature is mine.

11 Q Oh, I'm sorry.

12 A I'm sorry.

13 JUDGE BARRETT: Thank you.

14 BY MR. OLANIRAN:

15 Q Ms. Vernon, just stay with Exhibit 356
16 for a second. There is an attachment to the
17 claims form itself.

18 A The exhibit?

19 Q Yes, the exhibit. And that would be
20 the list of claimants that IPG purports to be
21 duly authorized to represent, is that right?

22 A That's correct.

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1 Q And if you go to item No. 60 on that,
2 and that would be Feed the Children that IPG has
3 on its list of joint claimants?

4 A Correct.

5 Q Okay.

6 JUDGE BARRETT: Mr. Olaniran, I think
7 we already had that --

8 MR. OLANIRAN: Okay.

9 JUDGE BARRETT: -- by stipulation.
10 So, if you just want to get the documents
11 admitted, we can just do it that way.

12 MR. OLANIRAN: Good. Good.

13 BY MR. OLANIRAN:

14 Q Let's go through it. You have in
15 front of you Exhibit, premarked as Exhibit 357.

16 A Yes.

17 Q Could you please identify the exhibit
18 for the record?

19 A Joint Claim for Satellite
20 Retransmission Royalty Fees, 2013.

21 Q And is that a true and correct copy of
22 the satellite, the joint claim for satellite

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1 retransmission royalties filed by IPG?

2 A Yes, it is, right.

3 Q And I had asked you about the
4 handwriting on the cable claim. Whose
5 handwriting is on the satellite claim?

6 A The same as with the cable.

7 Q Okay. And Feed the Children is also
8 identified as a joint claimant for IPG on this
9 document also, correct?

10 A On line 16.

11 Q All right.

12 MR. OLANIRAN: Move to admit Exhibit
13 357, Your Honor.

14 MR. MacLEAN: No objection.

15 MR. BOYDSTON: No objection.

16 JUDGE BARRETT: 357 is admitted.

17 MR. OLANIRAN: Okay.

18 [Whereupon, the document marked as
19 MPAA Exhibit No. 357 for
20 identification was received in
21 evidence.]

22 BY MR. OLANIRAN:

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1 Q Now, Ms. Vernon, you spoke both
2 yesterday and I think a little bit today, one of
3 your main responsibilities is dealing with these
4 confirmations of engagement, correct?

5 A Say it again? I'm sorry.

6 Q I said one of your responsibilities
7 with respect to preparing for this proceeding is
8 dealing with the confirmations of engagement
9 forms that you sent to claimants, correct?

10 A You mean the acknowledgment forms?

11 Q The acknowledgment --

12 A Yes.

13 Q Some of them, I believe, were titled
14 "Confirmations," or are they the same, but that
15 is what I'm referring to.

16 A Right.

17 Q Is it okay, do you prefer for me to
18 call them "acknowledgments" or --

19 A That's what I call them.

20 Q Okay. And these acknowledgments ask
21 the email recipient to confirm IPG's
22 representation of the recipient, is that right?

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1 A Correct.

2 Q For all of the relevant years, in
3 some cases one particular time period and in
4 others --

5 A Sometimes it's one year; sometimes
6 it's ten, yes.

7 Q And you sent all of the email requests
8 and accompanying confirmation forms to the
9 claimants, correct?

10 A Well, they get sent out, they get
11 emailed out. It's a mass email.

12 Q It's a mass email?

13 A Most of the time, yes.

14 Q How exactly did that work? I get that
15 you authored the email, and then, you have data
16 person, so they are merged?

17 A Yes. As I was saying the other day or
18 yesterday, I guess, our programmer, Kyle, is able
19 to merge the clients' information, email
20 addresses, and things like that, you know, and
21 then, merge it with whatever text we want him to
22 send. And then, he sends them all out.

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1 Q And so, basically, you author the text
2 and he does his magic and sends it out to your
3 intended recipients, correct?

4 A Right. Yes. And it goes out from our
5 email address.

6 Q Okay. And you stated yesterday that
7 this was really about a belt-and-suspenders
8 approach because you didn't really believe that
9 you needed to send out the confirmation. Is that
10 a fair characterization of your --

11 A Oh, well, with some, yes; with some,
12 no. We felt, well, we really had all that we
13 needed. You know, some we thought, well, you
14 know, it would probably be a good idea to have
15 more firm confirmation.

16 Q I'm not sure I'm clear on what you're
17 saying. You're saying, for some claimants, it
18 was a belt-and-suspenders approach, and then, for
19 other claimants or for other intended recipients,
20 you may have needed that confirmation? Is that
21 right?

22 A Well, not really. It's more of some

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1 things are more important than others. I mean,
2 some we had so much correspondence and so much
3 backup. And like I was saying yesterday, you
4 know, and the mandate agreements and all of that.
5 But some, you know, we had the extension
6 agreement, but not the mandate agreement. You
7 know, there were bits and pieces that were
8 missing, even though we did have correspondence.
9 And we felt, well, it wouldn't hurt; it would be
10 better if we had this additional acknowledgment
11 as well.

12 Q So, whether or not you felt
13 acknowledgments were necessary to be sent to a
14 recipient depended on the number of documents
15 that you had for that recipient?

16 A Well, no, not necessarily. It just
17 meant that some may have taken a little bit more
18 priority. You know, it was more of a judgment
19 call than anything else.

20 And, too, it had to do with time and
21 necessity. I mean, there's kind of a short
22 window of time for getting all of the -- by the

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1 time we get the data of the program list and
2 trying to get all of the programs identified on
3 the program list from all of the different
4 claimants, it takes a lot of time. And there is
5 a pretty short window to try to contact them all
6 and do that in all that period of time.

7 So, some of them, you know, even
8 though the acknowledgment letters had gone out to
9 them along with the Excel spreadsheets, you know,
10 there were some that it got to a point where I
11 don't even care about the acknowledgment letters
12 because they weren't that important, anyway.
13 Like I said, it was more of a belt-and-suspenders
14 thing.

15 You know, my main focus was make sure
16 and get their programs identified. Yes, so a lot
17 of them, I just, you know, if they sent the
18 programs, but they didn't send the
19 acknowledgment, that was fine. I mean, they were
20 clearly cooperating.

21 Q I understand, and I was merely trying
22 to determine what factors you considered before

1 deciding whether to send it to a particular
2 recipient, a belt-and-suspenders approach versus
3 sending to a recipient that you felt you needed
4 to. And I was trying to figure out, I was trying
5 to get you to articulate the distinguishing
6 factor between those that you considered
7 necessary to send to versus those that you
8 considered discretionary to send the emails to.

9 A Yes. There wasn't any kind of set
10 identifying factor with that. You know, pretty
11 much, just like all the other mass emails,
12 everything got sent. Some of them got them; some
13 of them did not, you know, because it's the AOL
14 account or their emails have changed or the
15 contact person is no longer at the company. So,
16 I would have to get on the phone and call them
17 and get all the new contact information. And
18 that is one of the things that just takes so much
19 time.

20 Q Do you recall -- you provided a
21 declaration that was, I think it has been
22 admitted into evidence probably a couple of times

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1 already -- but do you remember doing a
2 declaration with regard to this acknowledgment?

3 A Well, we have a declaration, but I
4 didn't think it got admitted.

5 MR. BOYDSTON: Your Honor, just to
6 help, we did attach a declaration as an exhibit
7 here, but I didn't offer it even further because
8 she is here, and I understand the Court's view on
9 that. But I don't know that that is what Mr.
10 Olaniran is referring to or not.

11 JUDGE BARRETT: I think he just asked
12 a yes-or-no question: did you sign a
13 declaration?

14 MR. BOYDSTON: I'm just curious what
15 he is referring to; that's all.

16 JUDGE BARRETT: Okay.

17 BY MR. OLANIRAN:

18 Q Ms. Vernon, could you please take a
19 look at Exhibit 308 --

20 A Okay.

21 Q -- in one of the orange cover binders?
22 And then, look --

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1 A Your declaration?

2 Q I'm sorry?

3 A Your declaration?

4 Q Yes.

5 A Okay.

6 Q And there are sub-exhibits to that
7 declaration. So, if you can flip to tab 26
8 within 308?

9 (Pause.)

10 Are you there?

11 A Just about. Sorry. There's a lot
12 here. Okay. All right.

13 Q And that is in tab 26 of Exhibit 308,
14 is your declaration, is the declaration of Denise
15 Vernon in response to order of July 30, 2014. Do
16 you see that?

17 A Yes.

18 Q And you go to paragraph 2 of that
19 exhibit, I mean of the first page. Do you see
20 that last sentence?

21 A Paragraph 2, the last sentence of
22 paragraph 2 on the second page?

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1 Q The last sentence on the first page.
2 I'm sorry.

3 A The first page?

4 "Although IPG does not believe that
5 such documents were necessary, their existence
6 contradicts any assertion that" -- and then, it
7 goes on to the next page -- "that IPG was not
8 granted authority to represent the signatory
9 claims for the calendar years indicated on such
10 documents."

11 Q Okay. So, the distinction that we
12 just talked about was not really made in that
13 declaration, is not made in this declaration, is
14 it, about confirmations that you considered
15 necessary versus the ones that you considered
16 discretionary?

17 A Can you --

18 MR. BOYDSTON: Objection, Your Honor.
19 The document speaks for itself.

20 JUDGE BARRETT: Sustained.

21 MR. OLANIRAN: That's fine.

22 MR. BOYDSTON: And also, Your Honor,

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1 I think the question misstated the testimony
2 today. The testimony today, Ms. Vernon said in
3 some detail it was belt and suspenders. She
4 didn't necessarily say "necessary," for what it's
5 worth.

6 JUDGE BARRETT: Sustained.

7 BY MR. OLANIRAN:

8 Q Now, Ms. Vernon, you provided MPAA
9 with a list of the persons and entities to whom
10 the confirmation of engagement emails were sent,
11 do you recall?

12 A Yes. Well, yes, we provided
13 everything we have.

14 Q And so, the lists you would have
15 provided were to us, were they lists of all of
16 the intended recipients of the acknowledgments?

17 A Pardon me? All of what?

18 Q The emails, the document that you
19 provided to us, to MPAA, identified all of the
20 intended recipients of the acknowledgment?

21 A Yes, I believe so.

22 Q Okay. And were the emails to sent to

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1 only IPG claimants?

2 A Well, they were intended to go to only
3 IPG claimants, but, you know, there's some that
4 we don't represent anymore that certainly could
5 have been on our programmer's list that they had
6 inadvertently been sent to, just like the thing
7 that I had mentioned a little while ago where we
8 erringly sent another Excel spreadsheet to some
9 of the clients and said, "You have not
10 responded." And they all called back, "What are
11 you talking about? We filled out this
12 spreadsheet." You know, I mean, stuff just gets
13 done like that, you know.

14 Q Now how did you determine, what
15 efforts -- strike that.

16 What efforts did you make, if any, to
17 distinguish, to determine whether a recipient in
18 the database was an IPG claimant?

19 A Oh, just kind of a one-by-one thing.
20 I mean, if they are an IPG claimant and we've had
21 contact with them, then if I don't get anything
22 from them, then I know to contact them. You

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1 know, if it went someplace, to some email that
2 wasn't an IPG claimant, then, more than likely I
3 probably haven't had contact with them and I'm
4 not going to be concerned if I don't hear from
5 somebody I don't know something went to.

6 Q So, are you saying that you made
7 particular efforts to eliminate from the list of
8 intended recipients those that were not IPG
9 claimants or are you saying that you did not?

10 A More than likely, I probably wasn't
11 all that concerned with it. You know, my main
12 concern certainly would be to make sure I'm
13 contacting all of the IPG claimants. Yes, I don't
14 want to leave those people out, you know. If
15 some that aren't got thrown in there, you know,
16 that's possible.

17 Q Now, how did you treat the recipients
18 that did not respond to your email asking for
19 acknowledgment of IPG's representation?

20 A As I had stated, that's when, you
21 know, when we didn't get a response, that is when
22 I would get on and see, okay, did the email get

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1 sent back because it is not a good email address
2 or did they just not respond, or what? So, I
3 would have to go in further and see what the case
4 was. And --

5 Q Let's say you do that -- oh, I'm
6 sorry.

7 A Sorry. You know, and at that point,
8 then I would try to remedy whatever the case was,
9 you know, call them, write them, see if I have
10 another contact name or number in my notes, and
11 send an email to the next person to see if the
12 other person is still there or not, yes.

13 Q Now let's say you do all that.

14 A Okay.

15 Q So, you now have 80 emails that you
16 sent out, and you've gone through that process,
17 and you still don't have a response from about 80
18 of them. What do you do with that non-responding
19 email recipient? Do you include that recipient
20 as part of your IPG-represented claimants or do
21 you just lift them out altogether?

22 A Well, it just depends on who it is.

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1 You know, if it is someone that we have been
2 doing business with and still have a contract
3 with, you know, and we know what all of their
4 programs are -- for instance, there are some that
5 I really didn't need to get anything new from
6 them because I had all of their information.
7 They had in 2011 given me their full catalog from
8 when they started up until 2011. So, clearly, I
9 didn't need to get any new information from them
10 for the point during 1999 to 2009 because I had
11 all of their programs.

12 Q So, if I understand your testimony
13 correctly --

14 A And if we already had an agreement
15 with them as well, then I've got their program
16 list. I've got the agreement. So, I didn't need
17 anything new from them.

18 Q Okay. Okay. Then, if I understand
19 your testimony correctly, you sent out the email,
20 the first email. You didn't get a response.
21 Perhaps you send out two or three additional
22 emails. No response. You attempt phone calls.

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1 No response.

2 But, based on the records that you
3 have with you, you go ahead, without even having
4 spoken to or have a two-way communication with
5 the email recipient, you go ahead and include
6 that claim, that entity, as an IPG claimant? Is
7 that correct?

8 MR. BOYDSTON: Your Honor, I object,
9 just misrepresenting her testimony, only to the
10 extent that what she said is sometimes she might
11 not have had a contact in this immediate moment,
12 but that didn't bother her because she said she
13 would have contact, if she had contact before
14 that time, then she didn't feel it necessary to
15 have contact right immediately at the time --

16 JUDGE BARRETT: Mr. Boydston, I
17 appreciate that you think that you need to coach
18 this witness, but please don't.

19 MR. BOYDSTON: Your Honor, I
20 apologize. I was not attempting that whatsoever.

21 JUDGE BARRETT: Okay. Overruled. Ms.
22 Vernon can answer the question the way she thinks

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1 she can answer the question.

2 MR. BOYDSTON: Your Honor, I was just
3 objecting to the form of the question; that's
4 all.

5 JUDGE BARRETT: Overruled.

6 But, if you want to try again, I'm
7 sure none of us remember the question, Mr.
8 Olaniran. I think you set forth process. Maybe
9 the better way to do it would be to ask the
10 witness to set forth the process.

11 BY MR. OLANIRAN:

12 Q Then, let me, another attempt at the
13 question. So, from my understanding of your
14 testimony, you send out the first acknowledgment.
15 You don't get a response. You send perhaps two
16 or three additional emails. No response. And
17 then, you attempt phone calls. No response.

18 But you have documents or you believe
19 you have documents, or maybe you don't have any
20 documents. And what do you do with that claimant
21 that has not responded, given those set of
22 circumstances?

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1 MR. BOYDSTON: Your Honor, I
2 apologize, but that's compound, because he said
3 maybe you might have documents about the person;
4 maybe you wouldn't.

5 JUDGE BARRETT: Sustained.

6 BY MR. OLANIRAN:

7 Q What if you go through the process and
8 you don't have a document with IPG evidencing a
9 representation of that claimant? What do you do?
10 Do you -- I'm sorry. Go ahead.

11 A I don't know. They're all so
12 different.

13 Q No, I'm asking --

14 A I can't give you a blanket answer for
15 every --

16 Q No, I'm asking you a very specific --

17 A -- specific claimant, you know, but
18 there are some that, if we hadn't heard from
19 them, we didn't have any contact with them, or
20 anything else, for years --

21 Q I'm not asking about those things.

22 A Well, that's what I'm trying to

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1 explain.

2 Q But I'm asking a very specific
3 situation, very specific.

4 A Okay.

5 Q You've gone through the process. You
6 have no contact. They're not responding to you,
7 and you have no document within IPG that suggests
8 representation. Do you still include that
9 claimant, that entity as an IPG claimant? Yes or
10 no?

11 A Well, I guess I would have to say no
12 because we don't include them if we have had no
13 documents. I mean, they're included because we
14 have documents, you know, correspondence, that
15 sort of thing.

16 So, I mean, if there has been no
17 correspondence ever, then they wouldn't be an IPG
18 claimant to begin with.

19 Q What if there were an IPG claimant
20 that terminated IPG before you ever got involved
21 with IPG, but they remained in the database
22 anyway? How do you know the intention of a

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1 recipient such as that?

2 MR. BOYDSTON: Your Honor, I object.
3 I think the question was, how do you know the
4 intention of a recipient such as that, which I
5 think calls for speculation.

6 MR. OLANIRAN: Let me rephrase the
7 question.

8 BY MR. OLANIRAN:

9 Q If a recipient fired IPG, let's say in
10 2003 -- so far, so good?

11 A Yes.

12 Q Okay. And they remained a part of
13 your database because, for some reason, that
14 database was not --

15 A Updated.

16 Q -- updated --

17 A Yes.

18 Q -- to delete that recipient.

19 A Uh-hum.

20 Q And you go through the acknowledgment
21 process and you send them a batch of emails and
22 followups. And the recipient does not respond.

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1 So far, so good?

2 A Okay.

3 Q Okay. And you rely on a document that
4 does not contemplate the termination, correct?

5 A Right.

6 Q Is it possible that you can list a
7 recipient like that as an IPG claimant?

8 MR. BOYDSTON: Your Honor, I have to
9 object to the hypothetical, for the reason that
10 what was left out is whether or not there is a
11 post-termination right and contract or not, which
12 is all important in that circumstance.

13 JUDGE BARRETT: But, again, Mr.
14 Boydston, the question is posed to the witness,
15 not to counsel.

16 MR. BOYDSTON: I understand, but --

17 JUDGE BARRETT: Please be seated.

18 MR. BOYDSTON: -- it is an incomplete
19 hypothetical in that regard.

20 JUDGE BARRETT: Fine. Then, you can
21 make that legal objection, but do not fill in the
22 blank.

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1 MR. BOYDSTON: That's what I made.

2 JUDGE BARRETT: So, the incomplete
3 hypothetical is sustained.

4 Ask the question again, please, Mr.
5 Olaniran.

6 BY MR. OLANIRAN:

7 Q Well, you testified earlier that there
8 may be in your database claimants that really
9 don't belong there that are not IPG claimants,
10 right? There are entities within your database
11 that are not IPG claimants, correct?

12 MR. BOYDSTON: Your Honor, I think
13 that misstates the testimony. I think she said
14 that it is possible that emails may have gone to
15 non-IPG claimants. That is different than saying
16 that they're in the database, I think.

17 THE WITNESS: That's what I said. The
18 emails may have --

19 JUDGE BARRETT: I think,
20 unfortunately, we have used database and email
21 listserv interchangeably up to this point. So,
22 we are going to need even more clarification.

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1 BY MR. OLANIRAN:

2 Q How do you determine the intention
3 whether or not an email respondent that you had
4 no communications with during the acknowledgment
5 process actually intended to be represented by
6 IPG, even though they didn't provide a response
7 to you, in light of all of the attempts you made
8 to contact them?

9 MR. BOYDSTON: I'm sorry, Your Honor,
10 I just didn't understand that question.

11 THE WITNESS: I'm sorry, I don't,
12 either. Can you say that again or --

13 BY MR. OLANIRAN:

14 Q If you have an email, if you have in
15 your database, if you sent an email to a
16 recipient and you went through the acknowledgment
17 process, two or three emails, telephone calls,
18 letters, whatever.

19 A Uh-hum.

20 Q You don't get a response from that
21 entity at all. Are there circumstances in which
22 you go ahead and include that entity as an IPG

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1 claimant?

2 A Yes. It's just like I have said a
3 moment ago. If I have had past correspondence
4 with them, then, yes, that's not unusual. I've
5 got a lot of them. I finally get a hold of them,
6 and I ask them, "Well, why haven't you contacted
7 me back?" Like, "Well, we gave you that
8 information two years ago."

9 Q I'm not asking you about feedback, Ms.
10 Vernon.

11 A But there are just circumstances like
12 that.

13 Q Ms. Vernon, I am not asking about who
14 you got a hold of.

15 A Okay.

16 Q My question is directed to the people
17 you did not get a hold of. You have a situation
18 where you had no communications during the
19 confirmation process with the claimant, and you
20 went ahead and included the claimant as an IPG-
21 represented claimant -- I'm sorry, the recipient
22 of an email as an IPG claimant.

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1 MR. BOYDSTON: Objection, Your Honor.
2 Asked and answered. She started her answer with
3 "yes". I believe she answered "yes".

4 BY MR. OLANIRAN:

5 Q Ms. Vernon --

6 JUDGE BARRETT: Sustained.

7 BY MR. OLANIRAN:

8 Q Ms. Vernon, your name appeared on most
9 of the mass emails to IPG claimants, is that
10 right?

11 A Yes.

12 Q And during your testimony yesterday,
13 you provided templates of different types of
14 emails that you sent to the claimant, right?

15 A Uh-hum.

16 Q And now, some of the emails that you
17 sent solicited information from the claimant with
18 regard to titles?

19 A Program titles.

20 Q And as we just discussed, some of them
21 had to do with preferring IPG's representation,
22 correct?

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1 A Correct.

2 Q And you used other emails to provide
3 status updates for the different proceedings that
4 IPG is engaged in within this retransmission
5 royalty scheme, right?

6 A Right.

7 Q And sometimes you informed them about
8 deadlines and procedural issues, right?

9 A Yes.

10 Q And would you agree that in
11 communicating with claimants you have to be
12 truthful?

13 A Yes.

14 Q Okay. And that if you're not truthful
15 and honest in your accounts to your claimants,
16 you will be doing them a disservice, right?

17 A I believe so.

18 Q And in all of your communications that
19 you sent to IPG's claimants you were completely
20 truthful, is that right?

21 A I was.

22 Q So, if one were to look at all of

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1 those communications, your email updates or
2 reports to the claimants, one should not find
3 misleading information in those summaries, right,
4 in those accounts, correct?

5 A I believe so, yes.

6 Q Let's look again at, let's go back to
7 Exhibit 308.

8 A Okay.

9 Q I think we looked at 308 just a second
10 ago.

11 A Yes.

12 Q And let's look at tab 27 this time.

13 A All right.

14 Q Do you see it?

15 A Yes.

16 Q And is this an example of one of your
17 accounts that you provided to IPG-represented
18 claimants?

19 A Yes.

20 Q Okay. And this is a report that
21 appears to be after the evidentiary hearing in
22 the 0003 proceeding, correct, but before the time

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1 of the termination, if you can tell?

2 A Yes, this would have been sent out
3 in --

4 Q I'm going to direct --

5 A -- probably around March.

6 Q I'm sorry. March of what year?

7 A 2014.

8 Q Okay.

9 MR. BOYDSTON: Your Honor, I just want
10 to point out this is the same as Exhibit 109 that
11 is in evidence.

12 JUDGE BARRETT: Yes.

13 MR. BOYDSTON: Okay.

14 THE WITNESS: Thank you.

15 BY MR. OLANIRAN:

16 Q And if you look at the background
17 section which says, "As noted in our recent
18 correspondence to you on June 13, IPG appeared in
19 Washington, D.C. for a five-day evidentiary
20 hearing."

21 So, this is after the evidentiary
22 hearing in the 0003 phase 2 proceeding, correct?

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1 A Right. Right.

2 Q Now, just above that, the background
3 section, in caps and bold it says, this text and
4 caps and bold says, "Please note that the failure
5 to execute the attached form acknowledgment
6 could subject your company's claim to
7 forfeiture."

8 Do you see that?

9 A Yes.

10 Q What did you mean by that?

11 A Well, basically, just what it says.
12 I mean, if there's not a claim, then it means
13 they're forfeiting their rights for whatever
14 particular year.

15 Q But it's not true, though, is it, if
16 the email recipient is not an IPG-represented
17 claimant?

18 A Pardon me?

19 Q This statement is not true if the
20 person or entity that received this email is not
21 represented by IPG, is it?

22 A Well, if they're not represented by

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1 IPG, then, for one, we probably wouldn't send
2 them the email to begin with. You know, if we
3 did, it was an error. And, no, of course it
4 would not be true.

5 Q Do you know whether that you sent an
6 email to A&E Television?

7 A No, I don't.

8 Q Okay. Now let's go down, still in tab
9 27. Under the background section, let's look at
10 the third paragraph.

11 A Under background?

12 Q Yes.

13 A Okay.

14 Q And in the first sentence, you
15 characterize the hearing as coming to counter-
16 intuitive, inexplicable rulings. And later in
17 that paragraph, you assert that claims were
18 randomly dismissed. Do you see that?

19 A Yes.

20 Q And do you consider this a truthful
21 account of the evidentiary hearing?

22 A Somewhat. You know, I doubt if

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1 everybody is ever 100-percent pleased by any
2 ruling, you know, that they get. But, yes, there
3 were some instances where I felt that we had
4 ample and adequate evidence and documents showing
5 that these claimants were IPG claimants and had
6 been for years and years and years and years.
7 And some of those got dismissed.

8 I mean, well, Maureen Millen, you
9 know, was an example. And so, there were plenty
10 of instances where I had communicated fully with
11 these people, and they had been cooperating with
12 me during this entire time and cooperated with
13 Raul long ago, that had gotten dismissed. So, I
14 felt, yes, there were instances like that.

15 Q So, let me ask you a little bit
16 differently. Do you think this is a completely
17 truthful account of that proceeding?

18 A Completely truthful. Subjective
19 maybe, but truthful.

20 Q Okay.

21 MR. OLANIRAN: Approach, Your Honor?

22 JUDGE BARRETT: Yes.

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1 MS. PLOVNICK: I'm sorry. This isn't
2 yet.

3 MR. OLANIRAN: Oh.

4 MS. PLOVNICK: It's been marked.

5 MR. OLANIRAN: It's just a whole bunch
6 of stuff. I'm sorry.

7 MS. PLOVNICK: It's been marked. So,
8 I mean, do you want me to --

9 MR. OLANIRAN: Let me ask a question.

10 MS. PLOVNICK: Okay.

11 [Whereupon, the document was
12 marked MPAA Exhibit No. 358 for
13 identification.]

14 JUDGE BARRETT: This is a good place
15 to take our morning recess?

16 MR. OLANIRAN: Sure.

17 JUDGE BARRETT: Let's do that, a 15-
18 minute recess.

19 MR. OLANIRAN: Thank you, Your Honor.

20 (Whereupon, the foregoing matter went
21 off the record at 10:30 a.m. and went back on the
22 record at 10:48 a.m.)

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1 JUDGE BARRETT: Please be seated.

2 I apologize, I'm breaking the rule by
3 bringing my coffee.

4 Mr. Olaniran?

5 MR. OLANIRAN: Thank you, Your Honor.

6 BY MR. OLANIRAN:

7 Q Ms. Vernon, before the break, we had
8 talked about the extent to which your accounts to
9 your claimants were completely truthful. And
10 right after that, I handed you an exhibit
11 premarked as 358. Do you recognize that
12 document?

13 A Yes.

14 Q And please describe the document.

15 A It's an email regarding the
16 proceedings for the June 2013.

17 Q Okay. And was this email prepared by
18 you?

19 A Actually, Raul and I.

20 Q Okay. And it went out under your
21 name, correct?

22 A Pardon me?

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1 Q It went out under your name?

2 A Yes.

3 Q Okay.

4 MR. OLANIRAN: Move to admit Exhibit
5 358, Your Honor.

6 MR. BOYDSTON: Your Honor, I object on
7 several grounds.

8 One is relevance. This is an email by
9 IPG to its claimants describing IPG's opinion as
10 to the outcome of the 2000-2003 hearing. It has
11 nothing to do with anything that was talked about
12 in direct, and therefore, is outside of the
13 scope.

14 In addition, it's irrelevant in the
15 sense that this is not offered or is not a
16 statement of truth or falsity. It's an opinion.
17 And to the extent that there is a legitimate
18 desire to impeach a witness, it should go to
19 something that the witness has testified about.

20 And simply saying, "Well, we just want
21 to know if you're telling a lie or have ever told
22 a lie in your life," I don't think that's proper.

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1 JUDGE BARRETT: Thank you, Mr.
2 Boydston.

3 Any objection, Mr. MacLean?

4 MR. MacLEAN: Your Honor, may I voir
5 dire?

6 JUDGE BARRETT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. MacLEAN:

9 Q Ms. Vernon, I see at the top of this
10 page in the "From" and "To" lines, this is from
11 worldwidesg@aol.com. That is an email address
12 that you use?

13 A Yes.

14 Q Since January 23rd, 2014, did you send
15 this email on January 23rd, 2014?

16 A Apparently.

17 Q It is sent to Jean McBride, Paramount.
18 Did you send this email to Jean McBride at
19 Paramount?

20 A I'm guessing that was the case. If it
21 was sent to our claimants, then it was another
22 mass email.

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1 Q That's at Paramount Pictures?

2 A I'm not really sure. I've never
3 spoken directly with a Jean McBride. So, as I
4 said, it was one of those mass emails that I'm
5 not sure exactly who this particular one went to
6 because I'm sure it went to hundreds.

7 Q The first line starts, "As the
8 designated representative of your company,..."?

9 A That is what the first line says.

10 MR. BOYDSTON: Your Honor, this is
11 going nowhere. I mean, we have already said this
12 is -- there is no dispute this has been written
13 by the witness.

14 MR. MacLEAN: Your Honor, I have no
15 objection to this exhibit.

16 JUDGE BARRETT: Okay. Thank you.

17 And, Mr. Olaniran, you're offering
18 this for what purpose?

19 MR. OLANIRAN: Impeachment purposes.
20 I had asked the witness about the accounts that
21 she makes to --

22 JUDGE BARRETT: You were asking, I

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1 believe, about her truthfulness?

2 MR. OLANIRAN: Yes, Your Honor.

3 JUDGE BARRETT: And is there a
4 statement of fact in this email that would
5 impeach her truthfulness?

6 MR. OLANIRAN: Yes. Yes.

7 MR. BOYDSTON: Your Honor, I would
8 like to know what he is referring to because this
9 is a recitation of --

10 JUDGE BARRETT: I understand. You
11 don't have to give me a narrative, Mr. Boydston.

12 I am going to allow it provisionally,
13 but I have to find a fact statement in here, and
14 you have to point that out to me, Mr. Olaniran,
15 or it will be withdrawn.

16 [Whereupon, the document marked as
17 MPAA Exhibit No. 358 for
18 identification was provisionally
19 received in evidence.]

20 CONTINUED CROSS-EXAMINATION

21 BY MR. OLANIRAN:

22 Q Ms. Vernon, if you look at the third

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1 paragraph of Exhibit 358 and you go to the second
2 line -- are you there?

3 A Yes.

4 Q You characterized the proceedings as
5 "pre-ordained, irrespective of what evidence was
6 presented at trial". Now what was your basis for
7 stating that the proceeding was pre-ordained?

8 MR. BOYDSTON: Your Honor, objection.
9 That is clearly a subjective expression of
10 opinion, not fact.

11 JUDGE BARRETT: Overruled.

12 THE WITNESS: Well, as I said, this
13 was something that Raul and I prepared. And I
14 can tell you at the time, then, even though on
15 the back page where it says, "While IPG
16 recognizes that this update might appear as sour
17 grapes," I can tell you there was a feeling a lot
18 of sour grapes at that time and it was very
19 touchy.

20 And I had told him that I thought this
21 might be a little -- some of his statements and
22 some of the sentences in there, you know, were

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1 going a little too far, but, you know --

2 BY MR. OLANIRAN:

3 Q So, you have no basis --

4 A This was the feeling at the time. It
5 was subjective.

6 Q You had no basis for stating that the
7 proceeding were "pre-ordained, irrespective of
8 what evidence was presented at trial"?

9 A Well, like I said, it was just an
10 opinion, you know. I mean, there were --

11 Q Whose opinion?

12 A There was a thing -- well, everyone
13 got different opinions, you know, but there was
14 just a feeling, at least with myself, and I know
15 Raul felt that way, too, that a lot of baggage
16 was brought in to the trial, despite everything
17 that had been presented at trial.

18 Q Let me ask you about the next line.
19 This also stated that "The CRB issued an opinion
20 that disregarded each and every argument made by
21 IPG, no matter how obvious."

22 MR. BOYDSTON: Your Honor, for the

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1 record, the same objection. I think this is an
2 expression of subjective opinion, not fact.
3 Therefore, I don't think it is appropriate for
4 impeachment.

5 JUDGE BARRETT: Noted.

6 BY MR. OLANIRAN:

7 Q What is your basis for that statement?

8 A Well, the ruling. I mean, it felt
9 like so many -- oh, like each and every argument
10 we had made, you know, was disregarded.

11 Q Okay. So, that was just a feeling?
12 You don't have a factual bases for that
13 statement, right?

14 A Well, you know, we can get down and
15 count exactly every single argument IPG made.

16 Q Are you trained as a lawyer?

17 A No.

18 Q Okay. Let's move on to the next one.
19 If you flip over to paragraph one, two, three,
20 four, paragraph five, which is the first
21 paragraph on the following page, the very first
22 sentence, you describe the CRB's decision as

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1 "extraordinarily tainted and how these figures
2 were adopted by the CRB defies reason". And you
3 are referring to the numbers that you talk about,
4 the allocation numbers you talk about on the
5 previous page.

6 What is your factual bases or basis
7 for that characterization?

8 MR. BOYDSTON: Your Honor, the same
9 objection.

10 JUDGE BARRETT: Noted.

11 THE WITNESS: Well, clearly, as we
12 said in the previous paragraph, it just seemed
13 extraordinarily skewed as compared to the
14 percentage of the 1997 royalties.

15 BY MR. OLANIRAN:

16 Q Okay.

17 A And I think we described that pretty
18 clearly in the previous paragraph.

19 Q So, in this account, though, you don't
20 mention at all in this account that the judges
21 found that Mr. Galaz's criminal history
22 compromised his credibility? Did you mention

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1 that in here at all, in this email?

2 A Oh, in this email, no.

3 Q Okay.

4 A But our claimants are familiar --

5 Q That's fine. Let me finish.

6 A Okay.

7 Q Let me finish.

8 And you don't mention any of the
9 judges' findings about the methodological
10 problems that they had with IPG's presentation,
11 do you?

12 MR. BOYDSTON: Your Honor, object, as
13 being argumentative.

14 JUDGE BARRETT: Overruled.

15 THE WITNESS: No, we didn't get --

16 BY MR. OLANIRAN:

17 Q Okay. And --

18 A -- into the specifics of everything
19 that was done at trial. I mean, we certainly
20 weren't going to, nor I doubt if they would
21 understand if we started getting into
22 methodology.

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1 Q Okay. And you don't actually mention
2 also that IPG could not substantiate some of its
3 representations, it representation of some of the
4 claims? Do you mention that in here?

5 MR. BOYDSTON: Objection, Your Honor.
6 Argumentative and the document speaks for itself.

7 JUDGE BARRETT: The latter objection
8 is sustained.

9 BY MR. OLANIRAN:

10 Q Do you mention at all in this email
11 that the judges found that IPG could not
12 substantiate its representation of some of the
13 claimants?

14 MR. BOYDSTON: Objection, Your Honor.
15 The same objection. The document speaks for
16 itself.

17 JUDGE BARRETT: Sustained.

18 MR. OLANIRAN: Okay.

19 BY MR. OLANIRAN:

20 Q In fact, do you mention at all in this
21 email any of the problems that the judges had
22 with IPG's presentation?

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1 MR. BOYDSTON: Objection, Your Honor.
2 The same objection. The document speaks for
3 itself.

4 JUDGE BARRETT: Sustained.

5 Having heard the testimony, Exhibit
6 358 is rejected.

7 [Whereupon, the document marked as
8 MPAA Exhibit No. 358 for
9 identification was rejected.]

10 MR. OLANIRAN: No further questions,
11 Your Honor.

12 JUDGE BARRETT: Thank you.

13 Mr. MacLean, questions for Ms. Vernon?

14 MR. MacLEAN: Your Honor, I would
15 like to just have one moment to collect the
16 documents that I need.

17 JUDGE BARRETT: You may.

18 (Pause.)

19 MR. MacLEAN: All right. Thank you,
20 Your Honor. I'm ready.

21 CROSS-EXAMINATION

22 BY MR. MacLEAN:

1 Q Good morning, Ms. Vernon.

2 I am Matthew MacLean. I represent the
3 Settling Devotional Claimants.

4 Now I believe you testified that you
5 are very careful to only file claims on behalf of
6 claimants who have authorized IPG to file on
7 their behalf, is that right?

8 A That's my intention.

9 Q Well, aside from being your intention,
10 are you, in fact, very careful to file claims
11 only on behalf of claimants who have authorized
12 IPG to file?

13 A I try to be.

14 Q Have you ever filed a claim on behalf
15 of a claimant that has sent IPG a termination?

16 A If I hadn't -- well, it's probably
17 happened, but it just -- but, if we didn't know
18 about the termination, then it could have
19 happened. I mean, clearly, there have been some
20 instances that we have seen here where people
21 have come up with termination letters that we had
22 no idea there had ever been a termination letter,

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1 you know, for a particular client.

2 And I've been communicating with a lot
3 of those clients to this day, and they never said
4 anything about having once sent a termination
5 letter, I'll say 10 years ago.

6 So, right, I mean, I don't do it
7 before the fact, but if I filed a claim for them,
8 it was because I had not known anything about
9 them terminating.

10 Q So, you have filed claims on behalf of
11 claimants who have terminated IPG?

12 A Not knowingly. I mean, if it was a
13 valid termination.

14 Q So, Feed the Children you didn't know
15 had terminated IPG at the time you filed a claim
16 for the 2013 year?

17 A I don't know if we did or not, but it
18 just depends on the contract.

19 Q All right, but I'm asking with respect
20 to Feed the Children.

21 A I'm not sure. I know we filed a
22 claim.

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1 Q And --

2 A And I saw the termination letter that,
3 you know, was sent in July.

4 Q You received this termination letter
5 in July. You filed the claim later in July,
6 right?

7 A Correct.

8 JUDGE STRICKLER: Excuse me. If I may
9 ask, Ms. Vernon, the documents in question that
10 we referred to are 356 and 357 in evidence, and
11 you signed both of those right?

12 THE WITNESS: Correct.

13 JUDGE STRICKLER: And the date on both
14 of them is July 31st, 2013.

15 THE WITNESS: Right.

16 JUDGE STRICKLER: Did you in fact sign
17 those on July 31st, 2013 or 2014?

18 THE WITNESS: Oh. Oh, yes. Should
19 have been '14, right, because this is for 2013
20 fees.

21 JUDGE STRICKLER: I'm sorry. Are you
22 able to answer my question? I'm trying to find

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1 out whether you understand that you signed these
2 in July of 2013 or July of 2014.

3 THE WITNESS: I think it should have
4 been '14.

5 JUDGE STRICKLER: So when you say it
6 should have been, it's your recollection then
7 that you did in fact sign them in 2014 --

8 THE WITNESS: Exactly.

9 JUDGE STRICKLER: -- and 2013 was just
10 an erroneous marking?

11 THE WITNESS: Correct. Yes.

12 JUDGE STRICKLER: Thank you.

13 BY MR. MacLEAN:

14 Q Now, within MPAA Exhibit 307, which
15 includes the termination notice that IPG received
16 from Feed the Children, was -- well, first of
17 all, I heard your counsel say that Feed the
18 Children is not claimed in this proceeding. Is
19 that an accurate statement?

20 MR. BOYDSTON: Your Honor, I think
21 it's vague as to "proceeding." Could we have a
22 little definition as to "proceeding?" And

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1 there's a reason why it's unclear.

2 MR. MacLEAN: I was just quoting Mr.
3 Boydston, so I was --

4 JUDGE BARRETT: Well, this proceeding
5 I took you to mean the present proceeding, the
6 one in which we are holding hearings.

7 MR. BOYDSTON: Right. Exactly.

8 MR. MacLEAN: And I did, too.

9 BY MR. MacLEAN:

10 Q So is that correct, Ms. Vernon?

11 A Pardon me? Say again?

12 Q Is it correct that Feed the Children
13 is not claimed in this proceeding that we're
14 holding today?

15 A Well, it -- I thought it was claimed,
16 but it -- I thought it was claimed for just
17 particular years.

18 Q And are the years at issue in this
19 proceeding claimed on behalf of Feed the
20 Children?

21 A I'm not sure. Tell you the truth,
22 I've gotten so many of them so mixed up because

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1 there are so many of them that I'm losing track.

2 Q In fact, IPG --

3 A Because I could tell you -- let me
4 just explain. You know, with regard to Feed the
5 Children, I used to deal with them, you know, and
6 then they had this whole shake-up of people. And
7 to tell you the truth, I really don't know that
8 much about them because Raul and Brian have been
9 dealing with -- with them exclusively, you know,
10 for the longest time. Certainly this summer.
11 Since they came here and testified before the
12 Judges.

13 Q In fact --

14 A I really haven't had that much contact
15 with them.

16 Q -- Feed the Children is claimed by IPG
17 in this proceeding here today.

18 MR. BOYDSTON: Your Honor,
19 argumentative. She said she does not know.

20 JUDGE BARRETT: Sustained.

21 BY MR. MacLEAN:

22 Q Have you ever filed a claim on behalf

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1 of a claimant for with whom you have no written
2 contract or correspondence in IPG's files?

3 A I don't believe so. I -- I mean, at
4 -- you know, no contact? I -- I don't believe
5 so.

6 Q Did you file a claim on behalf of IWV
7 Media at a time when you had not written contract
8 in IPG's files?

9 A No. Well, you said no written
10 correspondence.

11 Q All right.

12 A I -- and we had had -- we -- we did
13 have correspondence. You know, we just couldn't
14 find the actual contract with IWV. But, yes, we
15 -- we did have correspondence.

16 Q You had written correspondence with
17 IWV Media at the time you filed IPG's claim on
18 behalf of IWV Media?

19 A Which time? I'm -- I'm -- I'm not
20 sure. Are you talking -- which time we filed?

21 Q I asked you if you've ever done that.

22 A For IWV?

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1 MR. BOYDSTON: Your Honor, I'm
2 confused. I don't think he said ever. I think
3 he first said since you filed. So I'm confused.

4 JUDGE BARRETT: Well, I think he did.
5 Overruled.

6 THE WITNESS: Well, there's -- there's
7 always been written correspondence with IWV. I
8 mean, so I -- I guess I'm not understanding the
9 question, you know, because -- because clearly,
10 you know, it had -- you know, there had been
11 filings in the past and everything. I didn't
12 make every filing for IWV, you know? Marian
13 Oshita had made them. Lisa Deloss had made them
14 in the past, you know? So, you know, there was,
15 you know, consistency, you know, that it had been
16 filed year after year after year after year. You
17 know, there had been contact and correspondence
18 between them. You know, so there was a history,
19 you know? And I said, you know, with -- with her
20 yes, but we didn't have -- you know, when we came
21 to the 2000, 2003 proceedings, we didn't have the
22 contract, you know, and Maureen didn't either.

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1 So -- but she validated, yes, you know, made the
2 filings.

3 BY MR. MacLEAN:

4 Q Did you file a claim on behalf of IWV
5 Media at a time when you didn't have a written
6 contract with IWV Media in your files?

7 A Yes, we've said that consistently.
8 That's why a lot of the --

9 Q Have you filed --

10 A -- claims got dismissed last time.

11 Q Have you ever filed a claim on behalf
12 of a claimant whose representation agreement with
13 IPG has expired?

14 MR. BOYDSTON: Your Honor, I'll
15 object. I think it calls for a legal conclusion,
16 because even I had to think about what it meant
17 to expire. Objection. Calls for a legal
18 conclusion.

19 JUDGE BARRETT: Sustained, but she may
20 answer. We won't take her testimony as that of a
21 legal expert.

22 So if you can answer the question, you

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1 may answer the question.

2 THE WITNESS: Well, I guess I don't
3 really know because I've got a question, too, as
4 I'm not exactly what you mean by -- by "expired."
5 Because all of the contracts are -- they're not
6 all exactly the same. Some have -- you know,
7 some have term limits that are, you know, like
8 just for a year. Or, you know, some have, you
9 know, language in there that -- you know, they're
10 just for three years or some are just, you know,
11 perpetual.

12 BY MR. MacLEAN:

13 Q All right.

14 A And --

15 Q Ms. Vernon, I'll clarify. Have you
16 ever filed a claim on behalf of a claimant after
17 the term of years that's set forth in the
18 representation agreement?

19 A Well, I have not knowingly done that,
20 you know, unless they had -- had given me, you
21 know, permission or, you know, that indicated
22 that, yes, they want to keep on going. So --

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1 Q I mean, you said you're very careful
2 not to do it, right?

3 A I try to be.

4 Q But has it ever happened that you've
5 filed a contract after -- filed a claim after the
6 term of years set forth in the contract is over?

7 A I don't know.

8 MR. BOYDSTON: Objection, Your Honor.
9 He asked her before. She said not knowingly. I
10 think it's been asked and answered.

11 JUDGE BARRETT: Sustained.

12 BY MR. MacLEAN:

13 Q Did you file a claim on behalf of Bob
14 Ross, Inc. after the term of years set forth in
15 the representation agreements had expired?

16 A It's hard for me to recall exactly
17 what the situation is, but as I recall, we had
18 been filing for him for quite a number of years.
19 And then at some point he had said -- and we had
20 been paying him and accounting to him for a
21 number of years. And then at some point he had
22 said, oh, well, I had terminated so many years

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1 ago. And all of a sudden he just revealed that
2 at some point. And I don't -- I don't know where
3 it came from, but like I said, he didn't have a
4 problem with it when we were paying him and
5 accounting to him for -- for all of those years.
6 But I can't remember all the -- all of the
7 details or the circumstances to it. So --

8 Q But --

9 A -- like I said, so, you know, we -- we
10 had been making claims for him, but, you know, if
11 he had, you know, terminated, we had no idea of
12 his termination. You know, we wouldn't have been
13 making claim for him if we, you know, had
14 realized he had terminated any time soon before
15 that.

16 Q So does this fall under the category
17 of your answer not knowingly?

18 A Well, I would say so, yes.

19 Q If you could take a look at SDC
20 Exhibit 602, which is in the SDC exhibit binder.

21

22 A I'm sorry. Could you say that number

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1 again?

2 Q Six-zero-two.

3 A Okay. I'm there.

4 Q And you'll see that this is a
5 declaration of Walter Kowalski. And it has
6 attachments to it. And if you'll turn to
7 Attachment F of that declaration.

8 A Okay.

9 Q This is an email from you to Mr.
10 Kowalski, is that right?

11 A Yes.

12 Q Did you write this email?

13 A Yes.

14 Q And you sent it to Mr. Kowalski?

15 A Yes.

16 Q On March 12th, 2013?

17 A That's, yes, what the email says.

18 MR. MacLEAN: Your Honor, I move
19 admission of Attachment F to SDC Exhibit 602.

20 MR. BOYDSTON: Your Honor, I object on
21 the grounds of relevance. There's no evidence
22 that any claim is being made in this proceeding

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1 at this time on behalf of this entity, Bob Ross,
2 Inc. The only thing that's ever even been made
3 by IPG on behalf of that entity has been in the
4 public broadcasting category, not this one. So
5 this is -- it was just irrelevant.

6 MR. MacLEAN: Your Honor, this is
7 impeachment evidence. She said she did not
8 knowingly file a claim on behalf of a claimant
9 after learning of the expiration of a contract,
10 and I intend to show that that's not a truthful
11 statement.

12 JUDGE BARRETT: Are you asking that
13 the exhibit be admitted or only the attachment?

14 MR. MacLEAN: At this time, Your
15 Honor, I am only asking for Attachment F to SDC
16 602.

17 JUDGE BARRETT: Any objection? Mr.
18 Olaniran, any --

19 MR. OLANIRAN: No objection, Your
20 Honor.

21 JUDGE BARRETT: All right. At this
22 point we will admit Attachment F. And the clerk

1 will make a note of that.

2 (Whereupon, the above-referred to
3 document was received into evidence as Attachment
4 F to SDC Exhibit No. 602.)

5 BY MR. MacLEAN:

6 Q Ms. Vernon, in Attachment F you are
7 responding to Bob Ross, Inc.'s contention that
8 IPG's representation agreements with Bob Ross,
9 Inc. had expired, is that right?

10 A I'm sorry. I was -- I was trying to
11 read it.

12 Q In Attachment F you are responding to
13 Bob Ross, Inc.'s contention that its
14 representation agreements with IPG had expired,
15 is that right?

16 A Yes.

17 Q And in fact IPG has no record of any
18 signed continuation of the representation
19 agreements with Bob Ross, Inc., is that right?

20 A Yes, that's correct.

21 Q You wrote this email in March of 2013,
22 is that right?

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1 A Yes.

2 Q So by March of 2013 you were aware
3 that you were outside the term, that IPG was
4 outside the term of its representation agreements
5 with Bob Ross, Inc., is that right?

6 A Yes, I believe so.

7 Q There was never any continuation of
8 those agreements signed, is that right?

9 A I believe so.

10 Q And if you take a look at MPAA Exhibit
11 356, this is IPG's joint claim for cable
12 retransmission of royalty fees for the year 2013,
13 is that right?

14 A Yes.

15 Q Which you testified you signed and
16 filed in July of 2014, correct?

17 A Yes.

18 Q Which is after March of 2014, right?

19 A Right.

20 Q And if you take a look at line 23 of
21 Exhibit A to MPAA Exhibit 356, you'll see IPG
22 made a claim for Bob Ross, Inc., is that right?

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1 A Yes.

2 Q After you knew that Bob Ross, Inc.'s
3 representation agreements with IPG had expired,
4 is that right?

5 A Well, I'd have to go back and look at
6 the -- the situation, but, yes, I -- I mean, I
7 don't know what years we made claim for. I mean,
8 it -- because it show it on this. You know, it's
9 just for during that period, but, you know, we --
10 we -- we could have been making claim for, you
11 know, 1999, you know? So --

12 Q Well, in MPAA Exhibit 356 IPG is
13 making claim for 2013, correct?

14 A Oh, that's right. You know, I was
15 looking at something else. Yes.

16 Q And if you take a look at MPAA Exhibit
17 357, which is IPG's joint claim for satellite
18 retransmission royalty fees in 2013, if you again
19 look at line 23 of Exhibit A to this exhibit,
20 you'll see that IPG made claim for Bob Ross, Inc.
21 for 2013 satellite retransmission royalty fees,
22 correct?

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1 A Correct.

2 MR. MacLEAN: Your Honor, at this time
3 I would like to attempt to lay a foundation of
4 relevance for MPAA Exhibit 358.

5 JUDGE BARRETT: Go right ahead.

6 BY MR. MacLEAN:

7 Q You still have MPAA Exhibit 358 in
8 front of you, Ms. Vernon?

9 A Yes.

10 Q Now, I asked you before if this email
11 was sent to Jean McBride at Paramount Pictures.

12 A Yes.

13 Q And it was, correct?

14 A That's what the email says, yes.

15 Q The first line of this email says, "As
16 the designated representative of your company we
17 are contacting you to update you on the status of
18 proceedings before the U.S. Copyright Office for
19 the distribution of 2000 to 2003 cable
20 retransmission royalties," correct?

21 A Correct.

22 Q Is IPG the designated representative

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1 of Paramount Pictures?

2 A It doesn't sound familiar to me, so I
3 don't think so, but --

4 Q So Paramount Pictures --

5 A -- like I said, it's -- things get
6 sent out in error sometimes. It's not unusual.

7 MR. MacLEAN: Your Honor, I move the
8 admission of MPAA Exhibit 358.

9 MR. BOYDSTON: Your Honor, objection
10 on the same grounds as before.

11 MR. MacLEAN: Should I make a proffer
12 as to relevance?

13 MR. BOYDSTON: Yes, if you would,
14 please.

15 MR. MacLEAN: Your Honor, the
16 relevance of this is IPG has its list of
17 claimants, its list of contact information, its
18 listed email addresses. It's the same list year
19 after year after year. They don't update it.
20 They don't strike claimants whose contracts
21 expired. They don't strike claimants who have
22 terminated them. They just keep on filing the

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1 claims year after year after year until they are
2 challenged on them, and sometimes even continue
3 filing them after that. Their email --

4 MR. BOYDSTON: Your Honor, this is
5 testimony. He's saying things that aren't in
6 evidence.

7 MR. MacLEAN: This --

8 JUDGE BARRETT: That's right.

9 MR. MacLEAN: This piece of evidence
10 shows, MPAA 358 shows that IPG is sending out its
11 emails to its alleged claimants, including people
12 -- no connection whatsoever with IPG and then
13 getting correspondence back showing that the
14 correspondence that IPG sends out and receives
15 back from these claimants means nothing. It does
16 not imply in the least that there is a contract
17 principle agency relationship between IPG and the
18 claimants, the alleged claimants that it's
19 sending these emails to that rebuts Ms. Vernon's
20 testimony. It also goes directly to the points
21 that both SDC and MPAA are making relating to
22 IPG's -- the sufficiency of the evidence of IPG's

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1 authority to represent the claimants it's
2 claiming.

3 MR. BOYDSTON: Your Honor, I don't
4 think that answers the objection, the original
5 objection, but moreover Mr. MacLean's statements
6 are full of facts not in evidence. Paramount,
7 this Jean McBride from Paramount is a successor
8 in interest to a number of different entities
9 including those which were IPG claimants. So him
10 saying there's no connection, there's no evidence
11 in support of that. And if we want to get into a
12 full evidentiary hearing on that, it can be
13 established that, yes, there is.

14 So back to the original objection, the
15 original objection I think still stands and I
16 made in response to Mr. Olaniran's attempt to
17 admit it. I renew that objection now.

18 MR. MacLEAN: Your Honor, if IPG has
19 an explanation for this, they can make it, but it
20 is relevant. It goes to show the points that I'm
21 making here.

22 JUDGE BARRETT: I need to confer with

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1 my colleagues.

2 (Whereupon, the above-entitled matter
3 went off the record at 11:27 a.m. and resumed at
4 11:30 a.m.)

5 JUDGE BARRETT: Please be seated.

6 Exhibit 358 is now admitted for
7 impeachment purposes only subject to
8 cross-examination or rehabilitation of the
9 witness, as would be the case in any proceeding.

10 (Whereupon, the above-referred to
11 document was received into evidence as MPAA 358
12 Exhibit No. 358.)

13 JUDGE BARRETT: We want the record to
14 be clear that Mr. MacLean's proffer regarding
15 IPG's business practices is not part of this
16 document, and this document does not establish
17 that proffer. It's simply offered for the
18 impeachment based upon the first line of the
19 exhibit.

20 Now to follow up, Ms. Vernon, I think
21 this has been asked and I'm not sure that any of
22 the Judges are clear on the answer, so let me

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1 just ask straightforwardly when IPG receives a
2 notice of termination of relationship with a
3 client with whom IPG has had an ongoing
4 relationship, what is the business process at IPG
5 with regard to your internal database, your
6 accounting database, your email LISTSERV? Across
7 the board what is the IPG business practice when
8 you receive a notice of termination?

9 THE WITNESS: I've got to say we don't
10 have anything set in stone, you know, and that
11 may just be poor organizational problems, but,
12 too, because it just depends on who -- on the --
13 on the client and when the termination is, you
14 know? If -- if the -- I mean, because if -- if
15 the termination is, okay, we're terminating now,
16 but due to the contract and the terms that means
17 that we still are in the term to where we have to
18 file the claim for that year then even though
19 they have terminated. So we wouldn't file for
20 them the next year, we would still want to keep
21 them, you know, on our list so they would receive
22 all of the information that all of our -- all of

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1 the other clients got. So --

2 JUDGE FEDER: Who makes that call as
3 to when you stop filing on behalf of a particular
4 client?

5 THE WITNESS: That would normally be
6 Raul. And sometimes would discuss it with Brian
7 because the first thing we would do is -- is look
8 at the -- the individual contract to see what the
9 terms are for each individual client.

10 JUDGE FEDER: So Raul perhaps in
11 consultation with counsel makes a determination.
12 What process do you have internally for ensuring
13 that that determination, whatever it is, is
14 carried out? In other words, that in year one
15 you receive a termination. You make a
16 determination internally that you still need to
17 file for that year. Whether or not that's
18 correctly termination. I'm not expressing an
19 opinion.

20 THE WITNESS: Yes.

21 JUDGE FEDER: But not for the
22 following year. How do you ensure that the

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1 following year you do not file for that claimant?

2 THE WITNESS: Tell the truth, I -- I
3 can't tell you one specific thing. You know, it
4 would be notes or, you know, things that we would
5 put up, you know, as notes to ourselves and our
6 emails basically that would go into that
7 particular claimant's file, you know, of
8 everything with them. I can't tell you one
9 particular thing. There -- there is not one
10 particular set of this, this, this and this.

11 JUDGE FEDER: When you prepare the
12 exhibit sheet that is attached to your claims, do
13 you review all of the files of all of the
14 whatever, 100 or 200 -- I guess we're looking at
15 about a little over 200 claimant's. Do you
16 review all of those files before preparing that
17 attachment and putting it on that claim form?

18 THE WITNESS: Should, but, you know,
19 I don't. And I'm not sure how detailed Raul goes
20 into -- into it as well.

21 JUDGE FEDER: Who prepares that
22 attachment?

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1 THE WITNESS: Raul does, yes. But
2 it's one, you know, that I see all the time
3 because it's, you know, the list of people I
4 start calling. So I'm familiar with them.

5 BY MR. MacLEAN:

6 Q Just to make sure the record is clear,
7 when you say "Raul," you're referring to Raul
8 Galaz?

9 A Oh, I'm sorry. Raul Galaz, yes.

10 Q And similarly when you say "Brian,"
11 you're referring to --

12 A Brian Boydston.

13 Q -- IPG counsel Brian Boydston?

14 A Correct.

15 Q Okay.

16 A Yes.

17 Q Before we leave MPAA Exhibit 358, I
18 need to ask this: I heard your counsel say that
19 Paramount Pictures is the successor in interest
20 to authorize claimants of IPG. Do you have any
21 knowledge of that?

22 A No, that -- that may be the case. I

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1 -- but I'm not familiar with it.

2 Q Have you ever filed with the Copyright
3 Royalty Board a notice that Paramount Pictures is
4 the successor in interest to any IPG claimant?

5 A I don't recall if I -- if I have.

6 Q Are you aware of the Copyright Royalty
7 Board rule that requires claimants in the event
8 of a legal name and/or address change to notify
9 the Copyright Royalty Board of the change?

10 A No, I am not.

11 MR. MacLEAN: Your Honor, I would ask
12 that the Board take judicial notice of 37 CFR
13 Section 360.3(c), this Board's rule, "In the
14 event that the legal name and/or address of the
15 copyright owner entitled to royalties or the
16 person or entity filing the claim changes after
17 the filing of the claim, the Copyright Royalty
18 Board shall be notified of the change."

19 MR. BOYDSTON: No objection.

20 MS. PLOVNICK: No objection.

21 JUDGE BARRETT: Mr. MacLean, we can
22 take official notice, but -- and think you for

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1 the promotion, but we can't take judicial notice.

2 (Laughter)

3 MR. MacLEAN: I understand, Your
4 Honor. In that case I ask that you take official
5 notice.

6 JUDGE BARRETT: Will do. Or maybe
7 it's not a promotion. I'm not sure.

8 (Laughter)

9 BY MR. MacLEAN:

10 Q Ms. Vernon, in addition to being the
11 99 percent owner of IPG, you are also Raul Galaz'
12 sister, is that right?

13 A That's correct.

14 MR. MacLEAN: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. BOYDSTON:

17 Q Sorry. I forgot my glasses, but I
18 think I can ask the first question.

19 Ms. Vernon, you were asked about the
20 veracity of IPG's agreements and your knowledge
21 -- actually strike that. You were asked about
22 whether or not emails ever went out to non-IPG

1 claimants, correct?

2 A Correct.

3 Q When IPG sends out an email to its
4 claimants is it intended only to send them to its
5 claimants?

6 A That's the intention.

7 Q Does IPG ever intentionally send
8 emails to non-claimants?

9 A Yes.

10 Q And what circumstances does IPG
11 intentionally send an email to a non-claimant?

12 A Intentionally send one to a
13 non-claimant?

14 Q Right. My initial question was does
15 IPG ever intentionally send an email to a
16 non-claimant?

17 A Not intentionally.

18 Q Thank you. Now with regard to Bob
19 Ross, Inc., I believe that you said that you
20 recalled that IPG had made claims on behalf of
21 Bob Ross, Inc. for a number of years. And I
22 think you said had paid money to Bob Ross, Inc.

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1 pursuant thereto. Is that true?

2 A Yes.

3 Q And that until 2013 Bob Ross, Inc.
4 never raised any issue about the legitimacy of
5 IPG's conduct in that regard. Is that the case?

6 MR. MacLEAN: Objection. Leading.

7 MR. BOYDSTON: I'll re-ask the
8 question.

9 BY MR. BOYDSTON:

10 Q Prior to 2013 were you aware of Bob
11 Ross at any time objecting to IPG collecting
12 money and passing it on to Bob Ross?

13 A No.

14 Q Now you saw the attachment to the
15 notice about termination which was a piece of
16 correspondence from Bob Ross, Inc. Actually it
17 was IPG back to Bob Ross, Inc., I think,
18 discussing Bob Ross, Inc.'s -- whatever it was.
19 Bob Ross, Inc. saying you shouldn't represent us
20 anymore.

21 JUDGE BARRETT: Excuse me. Let's be
22 precise.

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1 MR. BOYDSTON: Thank you.

2 JUDGE BARRETT: It's SDC Exhibit 602,
3 Attachment F.

4 MR. BOYDSTON: Thank you, Your Honor.
5 Your Honor, I'd like to mark what would be next
6 in line for IPG, which is 127. I'll pass them
7 out here.

8 JUDGE BARRETT: Actually 126 is next.

9 MR. BOYDSTON: Oh, you're right. I
10 have 126 I'm anticipating, but that would make
11 this 126. You're right.

12 JUDGE BARRETT: Okay.

13 (Whereupon, the above-referred to
14 document was marked as IPG Exhibit No. 126 for
15 identification.)

16 BY MR. BOYDSTON:

17 Q First of all, this is a letter from my
18 office dated July 10th, 2014. Is that what you
19 see there?

20 A Yes.

21 Q And on the second page there is a CC
22 to Independent Producers Group. You see that?

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1 A Yes.

2 Q Do you recall seeing this letter?

3 JUDGE BARRETT: Who is the addressee?

4 MR. BOYDSTON: I'm sorry. The
5 addressee is Mary Rasenberger, Esquire of Cowan,
6 DeBaets, Abrahams & Sheppard in New York City, a
7 law firm.

8 JUDGE BARRETT: Thank you.

9 BY MR. BOYDSTON:

10 Q Actually before you answer that, let
11 me ask you to just take a minute to read the
12 letter first.

13 A Okay. I've read it again.

14 Q Before I ask you about the letter, do
15 you recall the circumstances the letter
16 discusses?

17 A Yes, it's as we were discussing
18 earlier the Feed the Children email termination
19 that they sent.

20 Q And do you recall seeing this letter
21 when you got a copy of it?

22 A Yes.

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1 MR. BOYDSTON: And, Your Honor, I'd
2 like to move that Exhibit 126 be admitted.

3 MR. OLANIRAN: Objection, Your Honor.
4 This letter is dated July 10th, 2014.. They had
5 plenty of opportunity to produce it in discovery
6 and they never did.

7 MR. MacLEAN: It's the first time I've
8 seen this letter, Your Honor.

9 MR. BOYDSTON: Your Honor, this letter
10 is not responsive to any discovery. Moreover,
11 this is being brought in response to impeachment
12 evidence that was just brought up now and just
13 delivered to -- and just made part of their
14 impeachment attempt. It's merely an attempt to
15 rehabilitate and/or answer impeachment.

16 JUDGE BARRETT: The objection is
17 overruled.

18 MR. BOYDSTON: Thank you, Your Honor.

19 JUDGE BARRETT: I'm sorry. So the
20 record is clear, 126 is admitted.

21 (Whereupon, the above-referred to
22 document was received into evidence as IPG

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1 Exhibit No. 126.)

2 BY MR. BOYDSTON:

3 Q IPG filed 2013 claims in July of 2014,
4 correct?

5 A Correct.

6 Q And I know the date that is on it; we
7 just looked at that exhibit a minute ago, it was
8 misdated 2013, but that was in July of 2014,
9 correct?

10 A That's correct.

11 Q And are you aware as to whether or not
12 counsel for anyone else for Feed the Children had
13 responded to this letter at the time that IPG
14 filed these July claims?

15 A I don't believe so. Yes --

16 Q Thank you.

17 A Yes, after we sent this letter, then
18 I don't -- it -- yes. No.

19 Q You were asked about the processes
20 that IPG takes once termination happens, and
21 Judge Feder asked you specifically once a
22 determination has been made as to the term

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1 internally by IPG, what does IPG do?

2 With regard to IPG's claimants --
3 which I think are in excess of 200, is that
4 correct?

5 A That's correct.

6 Q Out of that number of claimants are
7 terminations common or are they not common?

8 A Not common.

9 MR. BOYDSTON: Thank you, Your Honor.
10 I have nothing further.

11 JUDGE BARRETT: Ms. Vernon, I have
12 some questions for you.

13 THE WITNESS: Okay.

14 JUDGE BARRETT: Are you right-handed
15 or left-handed?

16 THE WITNESS: I'm right handed.

17 JUDGE BARRETT: Okay. And is Mr.
18 Galaz right-handed or left-handed?

19 THE WITNESS: He's right-handed.

20 JUDGE BARRETT: Okay. Do you have a
21 rubber stamp with your signature on it that you
22 use for massive communication?

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1 THE WITNESS: No, I don't.

2 JUDGE BARRETT: Okay. Any follow-up
3 questions on the basis of those questions?

4 (No audible response)

5 JUDGE BARRETT: I actually want to ask
6 again another question with regard to Exhibits
7 356 and 357.

8 THE WITNESS: Okay.

9 JUDGE BARRETT: Those are the claims
10 for cable and satellite
11 retransmission --

12 THE WITNESS: Right.

13 JUDGE BARRETT: -- royalty fees for
14 2013.

15 THE WITNESS: Right.

16 JUDGE BARRETT: Do you have a specific
17 recollection of having signed those forms?

18 THE WITNESS: Yes. Yes, I do.

19 JUDGE BARRETT: Okay.

20 THE WITNESS: Yes, because I sign them
21 every year.

22 JUDGE BARRETT: Do you recall whether

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1 you filled in the date or whether it was already
2 there when you signed it?

3 THE WITNESS: That I can't remember.

4 JUDGE BARRETT: Okay. All right.
5 Thank you.

6 THE WITNESS: Yes.

7 JUDGE BARRETT: Any additional
8 questions?

9 MR. OLANIRAN: No further questions
10 FOR US, Your Honor.

11 MR. MacLEAN: I do have a single
12 question based on yours, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. MacLEAN:

15 Q To your knowledge does Mr. Galaz have
16 a rubber stamp with your signature on it?

17 A Not to my knowledge.

18 MR. MacLEAN: No further questions.

19 JUDGE BARRETT: Mr. Boydston?

20 MR. BOYDSTON: No, nothing further.

21 IPG rests its defense of the rebuttal by MPAA.

22 JUDGE BARRETT: Okay.

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1 MR. BOYDSTON: It would now be --

2 (Simultaneous speaking.)

3 MR. BOYDSTON: -- IPG's rebuttal of
4 the MPAA, which should last 10 minuets. And if
5 you'd like to start, we can do so.

6 JUDGE BARRETT: Correct. So you've
7 completed your cross of IPG with regard to its
8 rebuttal of the MPAA claims?

9 MR. OLANIRAN: Correct.

10 JUDGE BARRETT: Okay.

11 MR. OLANIRAN: And Mr. Galaz I think
12 will probably come back up and I'd have to do
13 additional cross.

14 JUDGE BARRETT: Okay. Understood.

15 Mr. Boydston, you may call your first
16 witness with regard to IPG's challenges to MPAA
17 claims.

18 MR. BOYDSTON: And may Ms. Vernon
19 stand down?

20 JUDGE BARRETT: She may. You can just
21 leave all of this.

22 THE WITNESS: Just this? Okay.

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1 (Whereupon, the witness was excused.)

2 MR. BOYDSTON: Your Honor, IPG calls
3 Raul Galaz.

4 JUDGE BARRETT: You remain under oath.
5 Thank you, Mr. Galaz. You may be seated.

6 MR. MacLEAN: Your Honor, we have our
7 witnesses planning on this afternoon, however, I
8 beginning to get the sense we might not get there
9 and I'm wondering if I could get a time estimate
10 from Mr. Boydston and Mr. Olaniran so that I can
11 make a determination as to whether to tell them
12 they can hold off until tomorrow.

13 JUDGE BARRETT: Oh, I'm sorry. I
14 perhaps misunderstood your representations at the
15 commencement of the hearing that all parties have
16 agreed that your witnesses would come on
17 Wednesday afternoon.

18 MR. MacLEAN: So, okay. Let me just
19 clear up any confusion about that. We did have
20 two witnesses that were both going to be very,
21 very short that were going to come at the
22 conclusion of lunch today. And that's what I

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1 told you at the beginning.

2 Since that time Mr. Boydston has
3 graciously agreed to stipulate to the
4 authenticity of the two exhibits that we were
5 going to put on through those two witnesses.
6 Therefore, they will not be here. However, we
7 have other witnesses whom we intend to present
8 that I've told to come this afternoon, but I'm
9 sure would appreciate being told to come tomorrow
10 if I can safely do that. And so I'm asking if we
11 can get a time estimate sufficient that I can
12 rely upon to tell the witnesses to wait until
13 tomorrow.

14 JUDGE BARRETT: Thank you for clearing
15 that up.

16 Mr. Boydston, what is your anticipated
17 direct examination time for this portion of your
18 case for Mr. Galaz?

19 MR. BOYDSTON: Your Honor, just give
20 me two seconds. I'm in the midst of reorganizing
21 for the next phase here, but --

22 (Off mic comment.)

1 JUDGE BARRETT: You may have all the
2 time you need, Mr. Boydston.

3 MR. BOYDSTON: I appreciate that, Your
4 Honor. I think that we probably have an hour or
5 so of direct cross-examination of Mr. Galaz,
6 depending upon the intensity of objections. But
7 I think an hour, even with the usual roar of
8 objections, is probably pretty close.

9 JUDGE BARRETT: And Mr. Olaniran, do
10 you have an estimate of the cross-examination of
11 Mr. Galaz in this phase of the proceeding?

12 MR. OLANIRAN: I had estimated about
13 an hour at the beginning when we were planning
14 this, and I'm sure Your Honor understood that I'm
15 not sure that these things go according to plan.
16 Actually, I had every intention of asking for
17 some extra time, given the somewhat lengthy,
18 unusually lengthy cross-examination that I had
19 with Mr. Galaz yesterday. So I'll try for an
20 hour. I'm hoping that we can stick to hour or
21 so.

22 JUDGE BARRETT: So given that the

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1 afternoon session is two hours and 15 minutes,
2 Mr. MacLean, I think you're safe in letting your
3 witnesses know they should come to nine o'clock
4 tomorrow, and if we have to squander 15 minutes
5 of hearing time this afternoon, we'll do so.

6 MR. MACLEAN: I appreciate that, Your
7 Honor.

8 JUDGE BARRETT: Mr. Boydston?

9 DIRECT EXAMINATION

10 BY MR. BOYDSTON:

11 Q Thank you, Your Honor. Mr. Galaz,
12 have you reviewed the electronic files produced
13 by the MPA in this matter?

14 A Yes, I have.

15 Q And let me ask you to take a look at
16 what's been marked as IPG Exhibit 1, or excuse
17 me, 12. Tell me if you recognize that document?

18 A Yes, I do.

19 Q And is that a document you created?

20 A Yes, it is.

21 Q And what does it purport to represent?

22 A It purports to represent a list of

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1 MPAA claim copyright owners, for which we have
2 received no substantiation of representation in
3 one or more years, because they were an
4 underlying -- purported to be an underlying
5 copyright owner represented by an agent, and
6 also to clarify, it was derived from the Excel
7 spreadsheet that was provided by the MPAA
8 pursuant to the Judge's order of July 30th, which
9 required the MPAA to produce a document that
10 couples a particular program claim with a
11 particular claimant.

12 In these circumstances, the Excel
13 spreadsheet that we received would indicate
14 whether or not the particular claimant in a
15 project for the program was represented by an
16 agent or not.

17 Q So let's look at the first name in
18 this. Number one is the designation. It says
19 "First Miracle Productions, Inc.," and then in
20 parentheses "Compact."

21 JUDGE BARRETT: Before we get into the
22 contents, are you going to offer this one too?

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1 MR. BOYDSTON: Yeah, I would think --
2 excuse me. Yes, Your Honor I am. I just thought
3 I'd probably need a little more examination
4 first, and I'll make the offer right now. We'd
5 like to move this into evidence.

6 MS. PLOVNICK: And for the record, I
7 think this is what he was going to testify to.
8 But this is something that I think he created
9 derived from a record that MPAA produced. So
10 this specific document was not produced by MPAA,
11 but was created by Mr. Galaz.

12 JUDGE BARRETT: I think the testimony
13 identified it as that.

14 MS. PLOVNICK: As long as that is
15 clear, we have no objection.

16 JUDGE BARRETT: Thank you. Mr.
17 MacLean?

18 MR. MACLEAN: No objection.

19 JUDGE BARRETT: 112 is admitted.

20 MR. BOYDSTON: Thank you, Your Honor.

21 JUDGE BARRETT: I'm sorry, 12 is
22 admitted.

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1 (Whereupon, the above-referred to
2 document was received into evidence as IPG
3 Exhibit No. 12.)

4 BY MR. BOYDSTON:

5 Q So Mr. Galaz, looking at the first
6 item there, it says -- when I said -- oh no. I
7 beg your pardon. I've got a bad pen. It was
8 "First Miracle Productions," and then Compact in
9 parenthetical. Given the explanation you just
10 gave us, please explain first Miracle, where you
11 came up with the title or the entity First
12 Miracle Productions, Inc.?

13 A Well, as I indicated, there was an
14 Excel spreadsheet that was produced by the Motion
15 Picture Association of America, pursuant to the
16 Judge's July 30th order. That spreadsheet
17 indicated which program claims were being made
18 for particular -- tied to particular copyright
19 owners.

20 Within that spreadsheet, it indicated
21 whether or not -- it actually did it differently,
22 depending upon the year. In some cases, it would

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1 have an additional column to indicate if the
2 claim was being made vis-a-vis an agent.

3 In other instances, such as -- and you
4 see the example here, First Miracle Productions,
5 it would indicate in the same column, next to the
6 purported copyright owner, who the agent was.

7 So for instance, in First Miracle
8 Productions here, it would indicate that we have
9 a circumstance in which First Miracle Productions
10 was being claimed on behalf of the MPAA vis-a-vis
11 the MPAA's agreement with Compact Collections,
12 not vis-a-vis any agreement between the MPAA and
13 First Miracle Productions for one or more years.

14 Q And is it your understanding that the
15 MPAA does have an agreement with Compact for --

16 A I'm not sure if they have it for all
17 years, but yes, I know that they have it, an
18 agreement with Compact. I mean I don't know
19 whether or not made claim in each of those years.
20 I presume that they did, I'm not certain. But I
21 know that in any event, the MPAA does have an
22 agreement with Compact.

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1 Q And based upon the database that you
2 referred to that the MPAA provided, that database
3 allowed you to connect Compact with First Miracle
4 Productions; correct?

5 A That is correct.

6 Q And that you were also able to
7 determine that First Miracle Productions is the
8 actual owner of a copyright -- of copyright
9 rights, if you will?

10 A To programs that are being claimed by
11 the MPAA in these proceedings, that's correct.

12 Q So it would appear -- is it your
13 understanding that Compact doesn't own the rights
14 to First Miracle Productions; rather, Compact is
15 an agent of First Miracle Productions, and it's
16 First Miracle Productions that owns the rights?

17 A To the programs that are associated
18 with the claims being made by the Motion Picture
19 Association of America.

20 Q Okay. Now you said that this was a
21 list of the claims, excuse me -- this is a list
22 of MPAA-represented claimants making program

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1 claims in this proceeding, for which there is no
2 contract directly with the owner of the
3 copyright, in this case First Miracle
4 Productions, Inc.?

5 A Correct, and there's one thing I need
6 to clarify about the list, because it was very
7 confusing. When we received the Excel
8 spreadsheet, it was very simple to dilute it down
9 just to determine a number of you might say
10 unique names that were being presented, and I
11 think when I did that, it came out to somewhere
12 around 1,500 or something.

13 But when you went through it, you
14 would see that names would come up differently,
15 and I'll use Compact as an example. I think it
16 said "Compact Collections, Limited," "Compact
17 Collections Limited," "Compact Collections Ltd.,"
18 "Compact Collections Ltd.," with nothing else.

19 Each of those in those for instances
20 would come out as a different entity. So when
21 you actually took the 1,500 unique copyright
22 owners that were identified and distilled it down

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1 for that, it came up with a list of I think of
2 600, roughly 650. I think I identify it in our
3 moving papers, roughly 650 unique copyright
4 claimants on whose behalf there were program
5 claims being made by the MPAA.

6 This is just a subset of that, of
7 those 650, the number that are being claimed
8 vis-a-vis agents. So it's a distinction between
9 the 582 and the 650, that that number that
10 identifies parties that are not being claimed
11 through agents in any year. These are the
12 underlying copyright owners who are being claimed
13 by agents for one or more years.

14 JUDGE STRICKLER: If I might interrupt
15 for just a minute. May I Judge?

16 JUDGE BARRETT: You may.

17 JUDGE STRICKLER: In the very first
18 line of IPG P-016, in parentheses you have
19 "Parent/Agent." I understand your testimony
20 about agent, what you mean by agent. But what
21 did you mean by parent?

22 THE WITNESS: That was actually, I

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1 think actually taken from the MPAA Excel
2 spreadsheet. I didn't put that in. So I think
3 it was -- I had taken to indicate that that's the
4 underlying copyright owner.

5 JUDGE STRICKLER: I don't need you to
6 speculate.

7 (Simultaneous speaking.)

8 THE WITNESS: We think that the --
9 says owner. That's how I took it.

10 JUDGE STRICKLER: So you just took it
11 from the Excel spreadsheet. You don't have any
12 independent knowledge --

13 THE WITNESS: Correct.

14 JUDGE BARRETT: And your question was
15 addressed to Exhibit 12, is that right? I think
16 you said 16.

17 JUDGE STRICKLER: Oh, I'm sorry. I
18 meant 12.

19 JUDGE BARRETT: Okay, thank you.
20 We're going to break at this time. We will
21 reconvene at 1:00. Mr. MacLean, if your status
22 conference runs long, just send up smoke signals.

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1 We'll attend your return.

2 MR. MACLEAN: Thank you, Your Honor.

3 (Whereupon, the above-entitled matter
4 went off the record at 12:02 p.m. until 1:15
5 p.m.)

6 JUDGE BARRETT: Please be seated. Our
7 Attorney Advisor pointed out to me that I did a
8 cut and paste on the length of time we have on
9 our afternoon session, based on 16 years of
10 experience from the afternoon session, it was two
11 hours and 15 minutes, as I pointed out.

12 But actually our afternoon session is
13 longer, because we start a half hour earlier and
14 go a half hour longer than we used to do back in
15 the day, as they say. So Mr. MacLean, did you
16 call off your witnesses this afternoon?

17 MR. MACLEAN: I did Your Honor, and I
18 should say a large portion of our exhibits are
19 being offered without a sponsoring witness, or if
20 there is a sponsoring witness, that sponsoring
21 witness may be me.

22 So I do think that we will have

1 sufficient business at the beginning of our case,
2 to at least make use of some of that time.

3 JUDGE BARRETT: Okay. I note that
4 none of you squander time.

5 MS. PLOVNICK: Also just pursuant to
6 our agreed order, MPAA has a rebuttal period
7 after IPG. So that would need to come before SDC
8 also. So I think we definitely probably --

9 JUDGE BARRETT: I think we'll be okay.
10 I'm not at all concerned.

11 MR. BOYDSTON: And Your Honor, after
12 lunch we discussed we're going to try and finish
13 up this aspect today hopefully, so we can begin
14 promptly with the SDC tomorrow, if not today. If
15 so, Mr. MacLean and I are -- hopefully we could
16 finish tomorrow and that was our goal.

17 JUDGE BARRETT: So I'm not at all
18 concerned. Of course, it totally disregards
19 what's happening across the street.

20 MR. BOYDSTON: Yes, I understand.

21 JUDGE BARRETT: So Mr. Boydston, you
22 may continue.

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1 Whereupon,

2 RAUL GALAZ

3 was recalled as a witness and, after having been
4 previously duly sworn, was examined and further
5 testified as follows:

6 DIRECT EXAMINATION (resumed)

7 BY MR. BOYDSTON:

8 Q Thank you, Your Honor. Mr. Galaz,
9 before we broke for lunch, we had been looking at
10 Exhibit 12.

11 It had been admitted, and you were
12 explaining that you had gone through MPAA
13 information that was produced, and from that you
14 came up with approximately 650 different
15 MPAA-represented claimants who owned programs, or
16 who owned -- who owned programs.

17 Then of those, 582 were in fact
18 represented by agents who contracted with the
19 MPAA. Do you recall that?

20 A That's correct.

21 Q So the balance of the MPAA-represented
22 claimants who are not represented by agents, have

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1 you seen evidence of their ownership of the
2 copyrighted material being claimed?

3 A The difference between 582 and the
4 larger number, yes I have. Well, I've seen
5 evidence of their ownership. In some
6 circumstances, yes; in some circumstances, no.
7 That brings in circumstances where a party is
8 making claim as an owner, and not necessarily as
9 an agent of an underlying owner.

10 I have seen evidence, I disagree with
11 some of it, because that brings up circumstances
12 in which just from eyeballing or personal
13 knowledge, I may know that that particular entity
14 is not the owner. But yes, I've seen at least
15 entities purporting to be the owner of programs.

16 Q Okay. Focusing back on the 582, in
17 which for those 582, just to confirm, there's
18 nothing in the record that you've been provided
19 or seen of those 582, whereby those 582 identify
20 a contractual agreement with an agent, such as
21 Screenwrites or EGEDA, that in turn has an
22 agreement with the MPAA; is that correct?

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1 A In those circumstances in which
2 they're being represented by an agent, you want
3 me to explain this, then that's correct. I
4 haven't seen the agreement, if there is one
5 between the agent and the underlying copyright
6 owner.

7 When I say the underlying copyright
8 owner, the underlying copyright owner as
9 identified by the MPAA. So and I want to be
10 clear that the interpretation of what I prepared
11 and what's number 12, this is for one or more
12 years.

13 So as an example, I would take the
14 first one. First Miracle Productions Compact.
15 What I can demonstrate is that in one or more
16 years, First Miracle Productions is being claimed
17 vis-a-vis Compact, and dependent upon the
18 agreement between the MPAA and Compact.

19 That doesn't mean that in some of
20 those years, First Miracle Productions has
21 contracted directly with the MPAA. It's usually
22 not the case, but there are some instances in

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1 which that is the case.

2 Q Okay. Staying on that same subject --

3 A And we're not challenging those for
4 purposes of this argument.

5 Q Understood. Well, explain to us under
6 what circumstances IPG is challenging the rights
7 of First Miracle Productions, Inc. in these
8 proceedings?

9 A It would be those claims that are
10 serving those particular years, where it's
11 derived vis-a-vis the agreement with Compact.
12 The obvious focus is, you know, untimeliness. We
13 have literally nothing, not one piece of
14 correspondence, not an agreement, not anything
15 between Compact and First Miracle Productions.

16 We have not an agreement or any
17 correspondence, not one shred of evidence between
18 First Miracle Productions and the MPAA. So
19 whatever claims are being attributed by the MPAA
20 to First Miracle Productions, is all based on
21 representations that are being made by Compact,
22 without our ability to scrutinize any actual

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1 representation of First Miracle Productions.

2 Q Now I presume that IPG accepts that
3 Compact, the agent, has in fact manifested an
4 intent for the MPAA to represent it and its
5 signees in these proceedings?

6 A Correct.

7 Q But what you're saying is we don't
8 have that same thing between who? Between who?

9 A Between the agent, in this instance,
10 it would be Compact, and the entity that the
11 MPAA, Compact, everybody acknowledges as the
12 actual owner of the particular programs that are
13 being claimed by, in this case, First Miracle
14 Productions.

15 Q Now in addition to not having any
16 evidence that First Miracle Productions has -- or
17 excuse me, that Compact represents First Miracle
18 Productions, is there any evidence that First
19 Miracle Productions has affirmed ownership of
20 certain programs to Compact?

21 A No, none.

22 Q Is there any evidence that First

1 Miracle Productions has any knowledge that it is
2 the MPAA, as opposed to Compact, that's pursuing
3 these claims?

4 A Well, you said as opposed to MPAA,
5 excuse me, as opposed to Compact. There's
6 literally nothing authored by -- in this instance
7 it would be for those particular years, there
8 would be absolutely nothing authored by First
9 Miracle Productions, attesting to either a
10 contractual relationship with Compact, and
11 awareness or contractual relationship with MPAA,
12 identification of any of its programming,
13 literally nothing tying to this proceeding.

14 Q And is there any evidence in the
15 record that First Miracle Productions, excuse me,
16 strike that.

17 Is there any evidence in the record
18 that Compact, in which Compact identifies First
19 Miracle Productions as an entity it represents?

20 MS. PLOVNICK: I object to the
21 characterization that there's nothing in the
22 record, because it mischaracterizes MPAA's

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1 production. But I might be a little premature,
2 because the witness hasn't really answered. So
3 that's halfway up.

4 JUDGE BARRETT: Okay, then you can go.

5 MS. PLOVNICK: Halfway back down.

6 THE WITNESS: In the record? No,
7 there's nothing in the record.

8 BY MR. BOYDSTON:

9 Q And we've been focusing just on First
10 Miracle Productions as an example. Would your
11 answers to these questions be the same for all
12 the entities in Exhibit 12?

13 A It would, with the exception of those
14 circumstances for certain years in which certain
15 entities have contracted direct with the MPAA,
16 and there are some. But we haven't challenged
17 those. These are those where the circumstance
18 exists, that we didn't identify particular years,
19 which would identify which claims we're
20 challenging.

21 That was in a separate document that
22 the Judges request that we prepare, and we gave I

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1 think about a week ago or something like that.
2 So let me give you an example. If you were two
3 -- because this is going to come up over and over
4 again probably.

5 If you look at the second page, you'll
6 see BBC Worldwide Americas. BBC Worldwide
7 Americas is -- for certain years has contracted
8 directly with the MPAA.

9 In other years, it's claimed through
10 an agent, and that was actually a big issue that
11 came up and will come up here again in the
12 2000-2003 proceedings, where BBC was claimed by
13 the MPAA, but you might say that the chain of
14 agency was the MPAA represented Fintage, a Dutch
15 entity, which represented EGEDA, a Spanish
16 collection entity, which purported to represent
17 BBC.

18 And it's one of our exhibits, but BBC
19 had no knowledge who even Fintage was.

20 Q Have you calculated the percentage of
21 IPG, excuse me. Have you calculated the
22 percentage of MPAA claimants who are represented

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1 only by an agent, rather than having made claims
2 themselves?

3 A Well, the way I do it, because I
4 thought it would be a lot more relevant, is I
5 calculated program claim combinations. So we
6 would take a particular program associated with a
7 particular claimant and for a particular year,
8 and I counted those up. I think I had it in the
9 declaration and I won't --

10 Q Please take a look at what's been
11 marked as Exhibit 11.

12 A All right.

13 Q And I believe Exhibit 11 is a
14 declaration drafted by yourself?

15 A Yes.

16 Q And Your Honor, I'm not going to move
17 to admit this, but I would like to direct -- if I
18 may, I'd like to direct the witness' attention to
19 a paragraph, simply to refresh his recollection
20 on a calculation he made.

21 JUDGE BARRETT: You may do so.

22 BY MR. BOYDSTON:

1 Q Thank you, Your Honor. Please take a
2 look at page two, paragraph four, and tell me if
3 that refreshes your recollection as to the result
4 of that calculation?

5 A Right. The calculation I made was an
6 aggregate of the MPAA program claims, and again
7 this is based on the Excel spreadsheet that they
8 provided to us. There were 43,628 unique program
9 claimant year combinations.

10 Of those, 19,527 were being made by
11 agents purporting to represent the underlying
12 copyright owner. That underlying copyright
13 owner, then in those situations it was an
14 underlying copyright owner who had not submitted
15 any direct evidence, any offered evidence of its
16 own, indicating what program titles it was
17 making claims for or confirming the agency
18 relationship.

19 Your question was percentage, 44.75
20 percent. That was the calculation.

21 Q Thank you. Are you familiar with an
22 entity known as Screenwrites?

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1 A Very well.

2 Q And what is Screenwrites to your
3 knowledge?

4 A Screenwrites is -- and I've always
5 referred to them as a quasi-governmental agency,
6 but I know they're private, that's based in
7 Australia. They collect a variety of secondary
8 -- what I would generalize as secondary rights
9 royalties for Australia and New Zealand.

10 They also will, at your request,
11 collect royalties as an agent, or they're not
12 acting as an agent in that circumstance, but as
13 an agent in territories beyond Australia and New
14 Zealand. However, the significance to this
15 proceeding is that they are neither a producer
16 nor a distributor of programming. They are not
17 ever a copyright owner.

18 Q You have any understanding as to
19 whether or not they are an agent in these
20 proceedings?

21 A They have executed documents with the
22 MPAA representing themselves, I believe always as

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1 an agent. Nonetheless, in the Excel spreadsheet
2 that we got from the MPAA, they're being
3 attributed as the owner of several programs,
4 where the underlying actual owner has not been
5 identified.

6 MR. BOYDSTON: Please take a look at
7 what's been marked as Exhibit 13, and are you
8 familiar with this document?

9 (Whereupon, the above-referred to
10 document was marked as IPG Exhibit No. 13 for
11 identification.)

12 THE WITNESS: Yes.

13 BY MR. BOYDSTON:

14 Q Did you create this document?

15 A I created this based on the same Excel
16 spreadsheet that I was referring to before, that
17 was produced by the MPAA in response to the
18 Judge's July 30 order.

19 Q And this is a list of -- references of
20 apparent agent and the right title. Explain to
21 us what this represents.

22 A This first column identifies, and this

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1 -- each of these would be, for instance, a
2 program claimant year combination. So for
3 Screenwrites, there's 79 program claimant year
4 combinations.

5 It would represent the -- in the first
6 column, the purported copyright owner I should
7 say, the title for which claims being made and
8 for the particular year. So you would actually
9 see in that first column like, well look at the
10 first example, Avalon Films.

11 JUDGE BARRETT: Uhh, we're just
12 identifying the document, Mr. Galaz, and there's
13 no question pending.

14 MR. BOYDSTON: Your Honor, I'd like to
15 admit Exhibit 13.

16 MS. PLOVNICK: No objection, as long
17 as it's clear that MPAA didn't create this
18 document.

19 MR. BOYDSTON: So stipulated.

20 MR. MACLEAN: No objection.

21 JUDGE BARRETT: IPG 13 is admitted.

22 (Whereupon, the above-referred to document

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1 was received into evidence as IPG Exhibit No.
2 13.)

3 BY MR. BOYDSTON:

4 Q Mr. Galaz, can you explain to us what
5 this depicts in terms of -- well, what it
6 depicts, what it explains?

7 A The first column identified, this
8 would have been a heading taken from the MPAA
9 Excel spreadsheet, Owner Current Agent, and
10 identifies the purported copyright owner. So
11 you'll see in that first instance it says "Avalon
12 Films Corporation (AVCS)."

13 AVCS, as the heading indicates, would
14 be either the parent or the agent. Well, we know
15 it's not a parent corporation; it's an agent.
16 AVCS stands for Audio Visual Collection Society,
17 also known as Screenwrites, the entity in
18 Australia.

19 So in that first instance, the
20 purported owner of the title bullet "Down Under"
21 is Avalon Films Corporation. Its agent is AVCS.

22 If you look lower, and it was just the

1 way it was organized, towards I think it starts
2 at number 49 on page two, Program Claimant Year
3 49, you'll see that with everything from 49
4 through Item 79, the particular program for the
5 particular year is attributed to Screenwrites as
6 the copyright owner.

7 So and this is -- this kind of goes
8 towards my prior exhibit, when I was saying when
9 you distill down the 1,500 down to actual owners,
10 you'll see that this is an example where at 49 it
11 says "Audio Visual Copyright Society Limited,
12 trading as Screenwrites."

13 But then when you go down to 56, it
14 says "Screenwrites AVCS," and then you go down to
15 71 and it just says "Screenwrites." Those are
16 all the same entity, the significance being here
17 at least that Screenwrites is being attributed as
18 the owner of these particular programs, which no
19 possible way that they could actually be the
20 owner. They could only be an agent, and the
21 underlying agent isn't identified.

22 Q Look at on that page two, Item 65, it

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1 says "Owner Screenwrites AVCS," and then the
2 program is "Outdoorsman with Buck McNeely." Are
3 you familiar with the program "Outdoorsman with
4 Buck McNeely"?

5 A Yes, I'm very familiar with it.

6 Q And how are you familiar with it?

7 A Buck Neely and his company, Timberwolf
8 Productions, was one of our earliest clients.
9 He's out of St. Louis. It's an outdoor hunting
10 show.

11 Q Is that Timberwolf still a claimant,
12 an IPG claimant?

13 A Yes, and they submitted -- we'll get
14 to it. They submitted a declaration here.

15 Q Have you discussed with Mr. McNeely or
16 his staff the fact that Screenwrites has listed
17 him in certain documents in this proceeding?

18 A Yes.

19 Q And what is -- what did he tell you?

20 A What he informed me is he has
21 absolutely no idea who Screenwrites is.

22 Q Are you familiar with an entity known

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1 by the acronym EGEDA, E-G-E-D-A?

2 A Yes, I am.

3 Q And what is that entity to your
4 knowledge?

5 A EGEDA would be a comparable entity but
6 for the territory of Spain. Comparable to
7 Screenwrites in Australia. They collect various
8 secondary rights, royalties. It's different than
9 -- different royalties than what Screenwrites
10 collects, but at the same time includes
11 retransmission royalties.

12 Q In reviewing the MPAA materials
13 provided to you, did you -- and other materials
14 in this proceeding, are you aware as to whether
15 or not EGEDA is a contracted agent with the MPAA
16 for these proceedings?

17 A I know that -- no. I don't believe
18 that they've actually contracted directly with
19 the MPAA. I think in each circumstance, they
20 have contracted through Fintage as the Dutch
21 entity.

22 Q So Fintage House has contracted as an

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1 agent with the MPAA, for the MPAA to collect
2 Fintage House properties, is what you're saying?

3 A That's correct.

4 Q But then what you're saying is in
5 turn, Fintage House has contracted with EGEDA?

6 A Correct. So Fintage is an agent, not
7 an earner, not a distributor. EGEDA is an agent,
8 not an owner or distributor.

9 MR. BOYDSTON: Please take a look at
10 what's been marked as Exhibit 16, and tell if
11 you're familiar with that?

12 (Whereupon, the above-referred to
13 document was marked as IPG Exhibit No. 16 for
14 identification.)

15 THE WITNESS: Sixteen?

16 BY MR. BOYDSTON:

17 Q Yes.

18 A Okay.

19 Q And are you familiar with that
20 document?

21 A Yes, I am.

22 Q And did you create that document?

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1 A Yes, I did.

2 Q And what did you create it from?

3 A Again, this was created from the Excel
4 spreadsheet that was produced by the MPAA
5 pursuant to the Judge's July 30 order this year.

6 Q And so from looking at that
7 information, you're able to see upon what
8 entities Fintage House is making claim; correct?

9 A Correct.

10 Q And was one of those EGEDA?

11 A EGEDA was one of the parties on whose
12 behalf Fintage House was making claim.

13 Q And then did that information also
14 display upon whose behalf EGEDA was making claim?

15 A Actually, I think that it went back
16 and forth. In some circumstances, at least in
17 these circumstances that are identified in this
18 particular Exhibit 16, these are all
19 circumstances in which EGEDA has also been
20 attributed as the copyright owner of these
21 particular programs for these particular years.

22 Q Now you say that EGEDA to your

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1 knowledge functioned like Screenwrites did, but
2 only in Spain, i.e., collecting royalties, not
3 producing movies and TV shows; is that correct?

4 A I know for a fact that they're not an
5 owner or distributor of programming.

6 MR. BOYDSTON: Your Honor, we've got
7 a little bit past it, but I'd like to move to
8 admit Exhibit 16.

9 MS. PLOVNICK: With the same
10 clarification, that MPAA didn't create this
11 document, we have no objection.

12 MR. MACLEAN: No objection.

13 JUDGE BARRETT: Sixteen is admitted.

14 (Whereupon, the above-referred to
15 document was received into evidence as IPG
16 Exhibit No. 16.)

17 BY MR. BOYDSTON:

18 Q Thank you, Your Honor.

19 A I would make a qualification of 16,
20 though, and I only know because I'm looking at,
21 to refresh my recollection paragraph six of what
22 would have been my declaration.

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1 This should have been 385 program year
2 combinations identified in 16, and when I went to
3 the end of 16 here, mine stops at 351. So it
4 appears that there may be a missing page.

5 MR. BOYDSTON: Your Honor, mine goes
6 all the way through to 385, but does anyone
7 else's?

8 MS. PLOVNICK: Mine ends at 351.

9 MR. MACLEAN: Yes, at the bottom of
10 page eight.

11 MR. BOYDSTON: Well, unfortunately it
12 appears that page nine has flown the coop. Mine
13 has it.

14 JUDGE BARRETT: Could you provide that
15 to all of us then please, Mr. Boydston?

16 MR. BOYDSTON: Yes, Your Honor, I
17 will.

18 BY MR. BOYDSTON:

19 Q Mr. Galaz, I think you may have just
20 said this, but I want to clarify. Based upon
21 what I see in this chart, it appears that what
22 you're reflecting is that EGEDA is purporting to

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1 be the owner of these individual programs; is
2 that correct?

3 A That's correct.

4 Q And I think you just testified that
5 you know of your own personal knowledge that's
6 not the case?

7 A Correct.

8 MR. MACLEAN: Your Honor, relating to
9 this exhibit, I was just checking as Mr. Boydston
10 said that, to see if I have the last page of my
11 exhibit, and mine goes through page eight. But
12 in following page eight, there's another in my
13 copy a notice, as part of the same exhibit, and
14 it appears to be actually the next exhibit in
15 order, or identical to the next exhibit in order,
16 IPG P-17.

17 So I just wanted to say that I had
18 understood the only thing being admitted into
19 evidence was the Excel spreadsheet and not these
20 additional pages following the Excel spreadsheet,
21 if it's in their binder.

22 MR. BOYDSTON: Well actually that's

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1 our intent.

2 THE WITNESS: Ma'am, if I could
3 clarify, and maybe it's included with these. I
4 just noticed the declaration I was looking at,
5 which is 11. Page nine of what should be 16 is
6 at the end of my page -- at the end of my
7 exhibit.

8 MR. BOYDSTON: Your Honor, may I
9 approach?

10 JUDGE BARRETT: You may.

11 MR. MACLEAN: It's in mine too, Your
12 Honor.

13 JUDGE BARRETT: Yeah, there it is.

14 (Pause.)

15 MR. BOYDSTON: Ahh, I see. So with
16 the Court's permission, maybe I'll move that page
17 --

18 JUDGE BARRETT: Yes. I'll ask the
19 Clerk to make a note that the last -- what is
20 currently the last page behind Tab 11 should be
21 the last page behind Tab 16.

22 MR. BOYDSTON: I'll observe the

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1 individual who I believe is responsible for that
2 is trying to give birth to her second child a
3 week from Friday, and has become a little
4 forgetful.

5 JUDGE BARRETT: No, Mr. Boydston. If
6 your office put these together, you are the
7 individual who's responsible.

8 MR. BOYDSTON: Absolutely. I was only
9 joking.

10 MR. MACLEAN: Your Honor, this is part
11 of everybody else's exhibit binder. Are we also
12 removing the pages following the Excel
13 spreadsheet, that in my copy it says Exhibit 7,
14 and then there's a page that says "Notice
15 Regarding Representation of BBC Worldwide
16 Americas," none of which appear to be part of the
17 --

18 MR. BOYDSTON: Those would need to go
19 to the next exhibit.

20 JUDGE BARRETT: I do not have that
21 notice as part of 16.

22 MR. MACLEAN: Okay. That might be --

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1 MS. PLOVNICK: I also do not.

2 THE WITNESS: That may be Exhibit 17.

3 MR. BOYDSTON: Yeah.

4 MR. MACLEAN: My copy also has an
5 Exhibit 17, which appears identical. So if it's
6 all right with you, I'll just take it out.

7 MR. BOYDSTON: Okay.

8 MR. MACLEAN: So if anything, I won't
9 bother anybody with it.

10 JUDGE BARRETT: Thank you. Mr.
11 Boydston.

12 MR. BOYDSTON: Thank you. Please take
13 a look at what's been marked as Exhibit 14, and
14 by its -- on its face, this appears to be a
15 declaration of Mr. McNeely. Are you familiar
16 with this declaration?

17 (Whereupon, the above-referred to
18 document was marked as IPG Exhibit No. 14 for
19 identification.)

20 THE WITNESS: Yes, I am.

21 BY MR. BOYDSTON:

22 Q And did you discuss the topics therein

1 with Mr. McNeely?

2 A Yes, I did.

3 Q And again, when you did discuss this
4 with Mr. McNeely, Screenwrites with Mr. McNeely,
5 what was the nature of his comments and
6 conversation?

7 A It was whether -- my question was
8 whether he had any familiarity with Screenwrites
9 or AVCS, Audio Visual Collection Society. He
10 communicated he had none.

11 I indicated that they were being
12 attributed as the owner of The Outdoorsman, and
13 McNeely asked if he had any familiarity as to why
14 this would be the case. He said he never heard
15 of Screenwrites or AVCS before, and that's why he
16 willingly provided this declaration.

17 MR. BOYDSTON: Your Honor, I'd like to
18 move Exhibit 14 into evidence.

19 MS. PLOVNICK: Your Honor, we have an
20 objection to numbered paragraph three, especially
21 the particular sentence that says "I have
22 reviewed the complete program claims at hearing

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1 between my represented entity and other
2 claimants" and it goes on.

3 There's no documents attached to this
4 declaration. So we do not have a copy of what
5 exactly was reviewed by Mr. McNeely, and it was
6 not produced to us.

7 And so we object, that this is an
8 incomplete document, and it also has prejudiced
9 our ability to prepare our rebuttal, in that we
10 don't know exactly what the programs being
11 reviewed are, other than what is referenced in
12 paragraph four. Otherwise, we don't have a list.

13 MR. BOYDSTON: Your Honor, I think
14 that goes to weight rather than admissibility,
15 and by way of illustration, I would remind the
16 Court that a number of the IPG, excuse me, none
17 of the MPAA exhibits which -- or declarations
18 rather, which have been admitted, referred to
19 misrepresentations made by IPG, with no further
20 detail, no attachments, nothing at all.

21 I didn't object to admissibility on
22 those, because I thought it was admissible. It

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1 simply went to there weight. If it's not
2 described, it's not described, and I think that's
3 up to the reader to make a judgment on it, and
4 not exclude the statement in toto.

5 MS. PLOVNICK: If I may respond, all
6 of MPAA's affidavits had attachments.

7 MR. BOYDSTON: But they did not --
8 there's no explanation in the declaration as to
9 what misrepresentations were made, and none of
10 those attachments identified the
11 misrepresentation.

12 JUDGE BARRETT: Well, just based on
13 the reading of this, the objection's overruled.
14 Exhibit --

15 MR. BOYDSTON: Fourteen.

16 JUDGE BARRETT: Fourteen is admitted.

17 (Whereupon, the above-referred to
18 document was received into evidence as IPG
19 Exhibit No. 14.)

20 MR. BOYDSTON: Thank you, Your Honor.
21 Please take a look at what's been marked as
22 Exhibit 15, and tell me are you familiar with

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1 this document?

2 (Whereupon, the above-referred to
3 document was marked as IPG Exhibit No. 15 for
4 identification.)

5 THE WITNESS: Yes, I am. It appears
6 to be a declaration by Jennifer Valle.

7 BY MR. BOYDSTON:

8 Q Who is Jennifer Valle, if you know?

9 A She's an employee with Lawrence Welk
10 Syndication.

11 Q And does IPG have a connection with
12 Lawrence Welk Syndication?

13 A We are representing claimant.

14 Q Did you discuss certain matters
15 regarding these proceedings with Ms. Valle?

16 A Yes, and specifically that the program
17 "From the Heart" was being claimed by AVCS as
18 well.

19 Q When you say "AVCS," do you mean
20 Screenwriters?

21 A Correct.

22 Q And what was Ms. Valle's reaction to

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1 that?

2 A Same as Mr. McNeely's. They didn't
3 know who Screenwrites was, and offered actually
4 the declaration or to testify about it.

5 MR. BOYDSTON: Your Honor, I'd like to
6 move Exhibit 15 into evidence.

7 MS. PLOVNICK: Your Honor, I'd just
8 renew the same objection for the record,
9 regarding the language in numbered paragraph
10 three. Otherwise, I have no objection.

11 MR. MACLEAN: No objection, Your
12 Honor.

13 JUDGE BARRETT: Exhibit 15 is
14 admitted.

15 (Whereupon, the above-referred to
16 document was received into evidence as IPG
17 Exhibit No. 15.)

18 MR. BOYDSTON: Thank you, Your Honor.
19 Please take a look at what's been marked Exhibit
20 17, and tell me if you're familiar with this?

21 (Whereupon, the above-referred to
22 document was marked as IPG Exhibit No. 17 for

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1 identification.)

2 THE WITNESS: I am.

3 BY MR. BOYDSTON:

4 Q And it purports to be a "Notice
5 Regarding Representation of BBC Worldwide
6 Americas." It's executed by a Mr. Vernon Chiu.
7 Has IPG entered into any contracts with BBC
8 Worldwide Americas?

9 A Yes, we did.

10 Q And has IPG filed claims on behalf of
11 BCC Worldwide Americas?

12 A Yes, we have.

13 Q And did you discuss this declaration
14 with Mr. Chiu?

15 A Yes. This was actually -- not only
16 was a declaration, but it was actually filed in
17 the court record in the 2000 and 2003
18 proceedings, when it was revealed that there was
19 also being -- there was also a claim being made
20 on behalf of the BBC by MPAA.

21 This is for calendar years 2000 and
22 2003. So this was not an instance in which BBC

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1 had contracted directly with the MPAA. It was
2 rather a claim purportedly on behalf of BBC being
3 made by agents.

4 When we looked further into it, it was
5 revealed that the sequence --

6 MR. MACLEAN: Objection, hearsay. But
7 also I believe he's getting into the content of
8 this declaration and the content of --.

9 JUDGE BARRETT: Thank you, sustained.

10 BY MR. BOYDSTON:

11 Q Thank you, Your Honor. This is dated
12 May 17th, 2013. Did you discuss the content of
13 this with Mr. Chiu in or around that time?

14 A Yes, I did.

15 Q And did you explain to Mr. Chiu what
16 you were just saying a minute ago, that based on
17 your review of certain records, that it appeared
18 that BBC Worldwide was being represented in part
19 by EGEDA?

20 A Correct. The sequence of events was
21 that the MPAA was representing with an agent
22 heading, branded with Fintage. Was purporting to

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1 represent EGEDA, also an agent.

2 JUDGE BARRETT: I'm sorry, has it been
3 offered and admitted? We're still getting into
4 the content.

5 MR. BOYDSTON: I'm sorry, Your Honor.
6 Sometimes I think we need more, perhaps more
7 punishment than we do. Your Honor, I'd like to
8 move Exhibit 17 into evidence.

9 MS. PLOVNICK: I have an objection to
10 Exhibit 17. Actually, I have two. First is
11 relevance, because this is -- appears to be
12 related solely to 2000 and 2003 cable royalties.

13 Second is that it references an
14 attached Exhibit A that my copy does not have.
15 The majority of the document is about the
16 attached Exhibit A, which is not included in
17 Exhibit IPG 17, and so it is incomplete.

18 MR. MACLEAN: Your Honor, I object on
19 the grounds of completeness. My copy also does
20 not include an Exhibit A, as referenced in the
21 declaration.

22 MR. BOYDSTON: Mine does not either.

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1 JUDGE BARRETT: Exhibit, I'm sorry, is
2 this 17? Exhibit 17 is not admitted at this
3 time, for reasons of incompleteness. But if it
4 was in fact filed in the prior proceeding, I
5 think it would be possible to make it complete.
6 So I won't foreclose that possibility.

7 MR. BOYDSTON: Thank you, Your Honor.
8 Given that possibility, may I ask a few more
9 questions of the witness?

10 JUDGE BARRETT: You may.

11 BY MR. BOYDSTON:

12 Q Do you know --

13 A I'm sorry. I was actually still
14 responding.

15 Q Please continue.

16 A The question that was --

17 MR. MACLEAN: Your Honor --

18 JUDGE BARRETT: Part of your objection
19 was noted, and that's also granted. Ask a
20 question, Mr. Boydston.

21 BY MR. BOYDSTON:

22 Q Oh, I didn't remember his objection.

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1 I think I asked you about whether or not you
2 communicated to Mr. Chiu that your view of the
3 records with regard to the 2000-2003 proceeding
4 included, or had -- there was information in
5 those records that demonstrated that EGEDA was
6 making claims for BBC; is that correct?

7 A There was --

8 MR. MACLEAN: Objection, leading.

9 JUDGE BARRETT: Overruled this time.

10 THE WITNESS: There was evidence that
11 EGEDA was making claim for the BBC, that Fintage
12 was making claim on behalf of EGEDA, and then
13 Fintage was the party that contracted with the
14 MPAA.

15 BY MR. BOYDSTON:

16 Q When you explained that to Mr. Chiu,
17 what was his reaction?

18 A They had no idea who Fintage is.

19 Q And did you discuss -- and Mr. Chiu,
20 what is his position at BBC?

21 A General counsel.

22 Q And that sounds like he's an attorney.

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1 Is it your understanding he's an attorney?

2 A Yes, it is.

3 Q And prior to that time, had you spoken
4 before or communicated before to Mr. Chiu?

5 A I've communicated several times with
6 Mr. Chiu over the last decade.

7 Q In part, were some of those
8 communications to obtain information to file
9 claims on behalf of BBC?

10 A The best part of it. He was actually
11 the individual who we originally spoke with when
12 they contracted with IPG.

13 Q Did Mr. Chiu, when you had those
14 communications with him prior to this time
15 period, appear to have a command of this
16 information, as far as you could tell?

17 A He did have a command of the
18 information, and just so I am clear about this,
19 the contract that we entered into with BBC
20 doesn't distinguish between cable and satellite.
21 It's cable and satellite retransmission --.

22 Q Did you discuss with Mr. Chiu the idea

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1 of drafting a declaration such as what would be
2 seen in this limited format here?

3 A Are you talking about this one or for
4 this proceeding?

5 Q I'm talking about this one.

6 A Yes. I spoke to him about this. He
7 was willing to execute a declaration to clarify
8 the rights and given, I think it was actually his
9 suggestion, that it actually be filed as part of
10 the record, which is why it ended up being
11 submitted by --.

12 Q Now obviously this is a different
13 proceeding than what this was originally created
14 for. To your knowledge, in the proceedings that
15 we're in now, for the years we're in now, do you
16 know whether or not EGEDA has also claimed in
17 this proceeding -- made claims on behalf of BBC?

18 A I know that they've actually withdrawn
19 it.

20 Q Okay. Do you recall receiving this
21 document complete with the Exhibit A at any time
22 from Mr. Chiu?

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1 A Yes, and that's what ultimately got
2 filed with the -- actually, I think BBC filed it
3 directly themselves, but I've got a copy
4 somewhere with the attachment.

5 Q Thank you. Now in your review of the
6 MPAA material that was provided to you, have you
7 observed any instances in which the MPAA was
8 attributing that it represented broadcasters, as
9 opposed to an agent or anyone else, with
10 ownership of certain programming?

11 A Several circumstances.

12 MR. BOYDSTON: Let me ask you to take
13 a look at what's been marked Exhibit 18.

14 (Whereupon, the above-referred to
15 document was marked as IPG Exhibit No. 18 for
16 identification.)

17 THE WITNESS: Okay.

18 BY MR. BOYDSTON:

19 Q This appears to be a declaration by
20 Heather Cochran. Do you know who Heather Cochran
21 is?

22 A Yes, she's an employee. I think she's

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1 the -- I think they actually say here that she --
2 I think she's the chief financial officer for the
3 Academy of Television Arts and Sciences.

4 Q And does IPG have a relationship with
5 the Academy of Television Arts and Sciences?

6 A Yes, a long-time client claimant we've
7 represented since 1998 maybe.

8 Q And did you -- in reviewing the
9 materials provided by the MPAA, did you see
10 anything in those materials referencing the
11 Academy of Television Arts and Sciences, in
12 connection with any broadcaster?

13 A Well, did I see anything with regard
14 to ATAS, yes. ATAS has basically just one
15 program, it's the Emmy Awards, and sometimes in
16 the daily we have it. It shows up as the awards,
17 Emmy Awards, dot Emmy Awards, Emmy Awards dot.

18 But it's basically the Emmy Awards for
19 any given particular year. I saw within the
20 MPAA data reference to the fact that they were
21 attributing ownership to four different entities
22 in four different years. In the other years,

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1 they were not making claim for it.

2 One year it was ABC, one year it was
3 CBS, one year it was NBC, another year it was
4 Content International, and I think that was
5 actually vis-a-vis an agent. Content
6 International is not even a broadcaster. That's
7 actually the foreign distributor of the Emmy
8 Awards.

9 Q And did that surprise you?

10 A Very much it surprised ATAS' -- the
11 Academy of Television Arts and Sciences as well.

12 MR. MACLEAN: Objection, Objection.
13 Objection first of all as to relevance of Mr.
14 Galaz's surprise. Objection second of all to Mr.
15 Galaz's speculation as to whether somebody else
16 was surprised.

17 MS. PLOVNICK: I have another
18 objection just in general to this --

19 JUDGE BARRETT: Sustained, Mr.
20 MacLean. You want to put yours on the record?

21 MS. PLOVNICK: Yeah, I do. This
22 affidavit, as I understand it, is regarding the

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1 show the Emmy Awards as Mr. Galaz just testified,
2 Prime Time Emmy Awards.

3 MPAA is not claiming the title "Prime
4 Time Emmy Awards" or "Emmy Awards," if you look
5 through Ms. Saunders' Appendix B to her cable and
6 satellite testimony, it's not listed.

7 We checked for the ones that are
8 listed and that are listed here in paragraph five
9 of this declaration.

10 JUDGE BARRETT: I'm sorry. Ms.
11 Plovnick, what's the legal basis of your
12 objection?

13 MS. PLOVNICK: So this is irrelevant,
14 Your Honor, because there is no claim being made
15 in this proceeding by MPAA for the title "Prime
16 Time Emmy Awards" or Emmy Awards Prime Time.

17 JUDGE BARRETT: The relevance, Mr.
18 Boydston?

19 MR. BOYDSTON: May I establish that by
20 questions?

21 JUDGE BARRETT: You may question the
22 witness.

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1 BY MR. BOYDSTON:

2 Q Mr. Galaz, what was the basis -- did
3 you have a belief that in fact the MPAA was
4 making claim for this?

5 A Yes. Based on the Excel spreadsheet
6 that was provided to us, which all this was based
7 on, it indicated that Emmy Awards was being
8 claimed by the MPAA for the years that I -- I
9 should say the years that ultimately were
10 referenced by Ms. Cochran in her declaration.

11 Specifically, that for calendar year
12 2000, it was being attributed to American
13 Broadcasting Companies; for 2001, CBS
14 Broadcasting Inc.; for 2002, NBC Universal, Inc.;
15 and for 2009, Content Film International.

16 I can't attest, because I haven't gone
17 back to look, as to what appears in the written
18 direct statement, the appendix to Ms. Saunders'
19 declaration. But I can attest to what appeared
20 within the Excel spreadsheet that was produced by
21 the MPAA pursuant to the Judge's July 30, 2014
22 order.

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1 MR. BOYDSTON: Your Honor, I'd submit
2 that it's relevant. It may be a question of
3 evidence as to whether or not such claim is in
4 fact made. There seems to be information on both
5 sides of the matter.

6 MS. PLOVNICK: Your Honor, the written
7 direct statement lists, you know, Jane Saunders'
8 testimony that was filed as part of our written
9 direct statement, has our title list. Those are
10 the titles that we are claiming.

11 The fact that a title may have been on
12 a certification and was stricken out at some
13 point, if it was, we're not claiming it. So I
14 think it's not relevant.

15 MR. BOYDSTON: The last thing I'll say
16 is this is exactly the same situation as what we
17 were attacked with, with regard to A&E
18 Television. Yes, it may have been on some of our
19 claims. We did not include it in our written --
20 in our rebuttal statement.

21 And yet that evidence came in anyway,
22 in support of certain points that MPAA is trying

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1 to make. I submit this should come in. It's the
2 exact same scenario, to try to support the point
3 that we're making, which is that the MPAA is
4 sometimes representing MDs that claim to have
5 programs that they do not.

6 Now granted, they're not pushing it
7 here just like we weren't pushing A&E. But to
8 the extent they can bring in evidence that at one
9 point in time we claimed A&E, we can bring in
10 evidence at one point in time they claimed the
11 Emmys.

12 MS. PLOVNICK: We have never claimed
13 these titles in this proceeding at all, unlike
14 A&E, which they did have on a list.

15 MR. MACLEAN: Your Honor, I apologize.
16 I believe it is possible I lost the thread of
17 this conversation. However, my recollection is
18 that the initial objection was to a question as
19 to whether Mr. Galaz was surprised.

20 (Simultaneous speaking.)

21 MR. MACLEAN: Now I'm not clear on
22 what is exactly being objected to.

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1 JUDGE BARRETT: Well, Ms. Plovnick is
2 making a record of her objection to the exhibit.

3 MS. PLOVNICK: And the line of
4 questioning.

5 JUDGE BARRETT: And the line of
6 questioning.

7 MR. MACLEAN: Your Honor, I don't
8 believe the exhibit has been offered into
9 evidence.

10 MR. BOYDSTON: No, I have not gotten
11 there.

12 JUDGE BARRETT: To the line of
13 questioning, that one is sustained.

14 MR. BOYDSTON: Your Honor, I'd like to
15 move Exhibit 18 into evidence.

16 MS. PLOVNICK: Renew my objection,
17 Your Honor.

18 JUDGE BARRETT: Sustained. Exhibit 18
19 is rejected.

20 (Whereupon, the above-referred to
21 document identified as IPG Exhibit No. 18 was
22 rejected.)

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1 MS. PLOVNICK: I'm sorry. Can you
2 repeat that?

3 JUDGE BARRETT: Exhibit 18 is
4 rejected. Or excuse me, refused is the
5 appropriate word, I believe.

6 BY MR. BOYDSTON:

7 Q Are you aware of other broadcaster,
8 broadcasters that have attributed ownership to
9 various programs that you believe is incorrect?

10 A Well, prefacing my response by saying
11 that what I'm relying on is the Excel spreadsheet
12 that was provided by the MPAA, that was
13 purporting to indicate which programs were being
14 claimed and associated with a particular owner
15 and agent for a particular year, I would say yes.

16 But that would be the same situation
17 as with regard to the Emmy Awards. When I
18 reviewed the spreadsheet, the Excel spreadsheet
19 that was provided electronically because it's
20 voluminous, I found numerous circumstances in
21 which the MPAA was making claim for programs that
22 I know firsthand are being represented by IPG,

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1 pursuant to an agreement with an IPG-represented
2 claimant, and in circumstances where those
3 individuals in some cases hadn't even been
4 broadcast by the particular network.

5 Q Let's stop for a second, for a little
6 clarification of the spreadsheet that we've been
7 talking about. Once again, where did you obtain
8 this or who gave it to you?

9 A The MPAA provided it. In the -- the
10 problem is that in the MPAA written direct
11 statement, it indicates, and it's about a 100
12 page-long document, that's the appendix in this
13 Jane Saunders' testimony, it says "We're making
14 claim for all these programs."

15 And it's not just on their page, which
16 is I think four columns in very small type and so
17 forth; it's literally thousands of programs. But
18 it doesn't indicate on that appendix who the
19 claimant is, on whose behalf the MPAA is making
20 the claim, or whether it's an agent or whether
21 it's actually the owner, whoever. Doesn't make
22 that.

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1 We requested and discovered that
2 information; it was denied. We moved to compel
3 it, and the Judges said, of course, you know, you
4 have -- if you're acting as an agent, you have to
5 identify which claimant, on whose behalf you're
6 making the program claim.

7 Pursuant to the order of July 30th,
8 2014, the Judges ordered the MPAA to then provide
9 to us an Excel spreadsheet that information, that
10 specifically identifies the underlying owner, the
11 agent, the program and the year for which the
12 claim is being made. So we have all that
13 information.

14 That's the information from which I
15 derived all of this. That's the information from
16 where I derived, for example, that the Emmy
17 Awards has been claimed by the MPAA for four
18 years and on whose behalf. So to the extent --

19 Q Just to clarify if I may, let me ask
20 a question. Just to clarify, this is in this
21 proceeding. So in other words, the information
22 you were given by the MPAA connecting the Emmys

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1 with ABC, CBS, etcetera, was for this
2 proceeding; correct?

3 A That's correct. So it's --

4 JUDGE BARRETT: Excuse me. Ms.
5 Plovnick, I thought you represented to the court
6 moments ago that MPAA had never filed a claim or
7 was not claiming or representing a claimant?

8 MS. PLOVNICK: We are not, and if you
9 look at our written direct testimony, and it's
10 Saunders Exhibit, I think it's B is the title
11 list for cable and satellite, the Prime Time Emmy
12 Awards is not there. That is our testimony.

13 We did produce electronic copies of
14 that to them pursuant to the Judge's order. So
15 they have it in paper and they have it in
16 electronic copy. We also, as Ms. Saunders
17 testified, created an Excel workbook to digitize
18 the certifications, which as you see have a lot
19 of handwritten notes on them, and we can't
20 capture handwritten notes in that way, although
21 we could try.

22 But so what we've got is a file that

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1 was created, pursuant to the Judge's order, to
2 help assist them with dealing with the paper
3 documents that were produced to them already,
4 which were voluminous and link up each MPAA
5 claimant with the titles that they had certified
6 and had all those notes on them.

7 But what I was representing to you is
8 in this proceeding, we have never claimed the
9 Prime Time Emmy Awards, because it's not in the
10 list of titles that we submitted as a part of our
11 written direct statement.

12 MR. BOYDSTON: The problem is it's in
13 this thing they gave us pursuant to discovery.
14 Now it may be there was a mistake on their part,
15 but if so, we should be able to get it into
16 evidence, to explain that there's been a mistake.

17 MS. PLOVNICK: It's an Excel workbook
18 and you saw, looking at the ones that were
19 already admitted, they're handwritten notes and
20 sometimes they strike through and things like
21 that.

22 JUDGE STRICKLER: Is that information

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1 on the -- in the Excel workbook, the one the
2 witness is testifying to?

3 MS. PLOVNICK: To the extent that --
4 to the extent it can be, but --

5 JUDGE STRICKLER: Well, I'm not asking
6 for can be. He said it is, and you're apparently
7 saying it is not. Are you fact saying he's
8 wrong, it's not in any document you've provided
9 in discovery?

10 MS. PLOVNICK: We have paper documents
11 that have all of that in there.

12 JUDGE STRICKLER: So it is in the
13 discovery?

14 MS. PLOVNICK: It is provided in
15 discovery, absolutely Your Honor. But it's in
16 discovery, but the title was not claimed by us.
17 It is not being claimed by us. It may have been
18 on a certification as not being claimed, but we
19 are not well pursuing a claim.

20 JUDGE BARRETT: What the witness is
21 testifying is that it was on a spreadsheet. Now
22 Mr. Galaz, was it on a spreadsheet that lined out

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1 --

2 THE WITNESS: Absolutely not, and
3 that's not --

4 JUDGE BARRETT: I know, it's a yes or
5 no.

6 THE WITNESS: Absolutely not, no.

7 JUDGE STRICKLER: Was it lined
8 out? Do you know or you don't recall?

9 MS. PLOVNICK: I do not. I do not
10 know.

11 THE WITNESS: I have --

12 MR. BOYDSTON: There's no question
13 pending. Your Honor, I renew my offer or my
14 request to admit Exhibit 18.

15 JUDGE BARRETT: Exhibit 18 is going to
16 be admitted. We're going to have to eventually
17 slog through this apparently, so go ahead.

18 (Whereupon, the above-referred to
19 document was received into evidence as IPG
20 Exhibit No. 18.)

21 MR. BOYDSTON: Thank you, Your Honor.
22 Let me ask you to take a look at what's been

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1 marked as Exhibit 20, and it purports to be a
2 declaration b Andre Fair. Are you familiar with
3 Mr. Fair?

4 (Whereupon, the above-referred to
5 document was marked as IPG Exhibit No. 20 for
6 identification.)

7 THE WITNESS: Yes, I am.

8 BY MR. BOYDSTON:

9 Q And do you know what entity he works
10 with?

11 A He works with Willie Wilson
12 Productions. He's an executive there.

13 Q And does IPG have a relationship with
14 Willie Wilson Productions?

15 A Yes. We've been representing them for
16 several years.

17 Q And are you familiar with this
18 declaration?

19 A Yes, I am.

20 Q Did you discuss this declaration with
21 Mr. Fair?

22 A Yes, I have.

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1 Q And in what context did this come up?

2 A It was in the context of again, the
3 MPAA-produced Excel spreadsheet, indicating that
4 the program Singsation was being attributed to
5 CBS Broadcasting, for I think it was calendar
6 year 2000.

7 Q And when you brought that to Mr.
8 Wilson, or not Mr. Wilson. When you brought that
9 to Mr. Fair's attention, what was his response?

10 A That it was absolutely --

11 MR. MACLEAN: Objection, hearsay, his
12 response.

13 MR. BOYDSTON: It is, Your Honor.
14 There's no question.

15 JUDGE BARRETT: Sustained.

16 MR. BOYDSTON: Your Honor, I'd like to
17 move that Exhibit 20 be admitted.

18 MS. PLOVNICK: We have no objection.

19 MR. MACLEAN: Your Honor, may I voir
20 dire?

21 JUDGE BARRETT: You may.

22 VOIR DIRE

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1 BY MR. MACLEAN:

2 Q Mr. Galaz, do you personally know
3 Andre Fair?

4 A No. Well I mean from the standpoint
5 of have I ever met him in person? No.

6 Q How have you communicated with Andre
7 Fair?

8 A Through several people at Willie
9 Wilson Productions that we periodically deal
10 with, and he's one of them.

11 Q What is -- do you know what position
12 Mr. Fair has with Willie Wilson Productions?

13 A My understanding was he was an
14 executive. The initial person we were dealing
15 with was Roxanne Jackson, then Mr. Wilson and
16 they directed us to have Mr. Fair execute this
17 particular declaration.

18 Q My question was do you have an
19 understanding as to what position --

20 A I don't have a firsthand knowledge of
21 what his position is with Willie Wilson
22 Productions.

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1 Q In the declaration, he says "I am an
2 authorized representative." Do you know what
3 authority he has as a representative of Willie
4 Wilson Productions?

5 MR. BOYDSTON: The person who's
6 authorized.

7 MR. MACLEAN: Your Honor, I object to
8 that.

9 MR. BOYDSTON: I apologize.
10 Withdrawn.

11 JUDGE BARRETT: It's stricken.

12 THE WITNESS: Do I know exactly the --
13 I'm sorry, what his position is or --

14 BY MR. MACLEAN:

15 Q I'm just asking if you know in what
16 capacity he is an authorized representative?

17 A No. I just know that Willie Wilson
18 and other individuals I've dealt with --

19 Q You don't know.

20 A Can I finish?

21 Q Well my question --

22 MR. BOYDSTON: You need to let the

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1 witness finish answering.

2 JUDGE BARRETT: It was, I think, a yes
3 or no answer. So he doesn't need to say anymore
4 than that.

5 BY MR. MACLEAN:

6 Q Who drafted it? Who drafted this
7 declaration?

8 A Well, we certainly sent out the form
9 after speaking with them. So I would say that
10 the initial draft was ours. If you'll give me a
11 moment, I'll tell you whether anything was --

12 Q And when you say "it was ours," do you
13 mean it was yours?

14 A I'd say it was initially drafted by
15 IPG.

16 Q By who in IPG?

17 A That would be me.

18 MR. MACLEAN: Your Honor, I object on
19 the basis of hearsay and also foundation.
20 There's no foundation in this declaration
21 establishing Mr. Fair's basis for knowledge for
22 what he says. That's my objection.

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1 MR. BOYDSTON: Your Honor, he says
2 he's an authorized representative. That
3 indicates that he is representing that he is
4 authorized to represent the company in this
5 context and make these statements.

6 MR. MACLEAN: Your Honor, being
7 authorized to say something doesn't mean you're
8 saying something that you have personal
9 knowledge.

10 JUDGE BARRETT: Except for the
11 preceding paragraph says "I have personal
12 knowledge."

13 MR. MACLEAN: But without foundation
14 for how he has personal knowledge.

15 JUDGE BARRETT: Okay. Exhibit 20 is
16 admitted.

17 (Whereupon, the above-referred to
18 document was received into evidence as IPG
19 Exhibit No. 20.)

20 DIRECT EXAMINATION (resumed)

21 BY MR. BOYDSTON:

22 Q Did you ask Mr. Fair whether or not

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1 CBS Broadcasting was authorized to make claim on
2 behalf in these matters?

3 A Yes.

4 Q What did he say?

5 A He said that they had --

6 MR. MACLEAN: Objection, hearsay.

7 MR. BOYDSTON: Yes, it is hearsay, and
8 it's merely what's in the -- I can have him read
9 what's in here. I think --

10 (Simultaneous speaking.)

11 JUDGE BARRETT: Well, if the
12 declaration is admitted into evidence and all Mr.
13 Galaz is going to do is to tell us what's in the
14 declaration, I think it's completely unnecessary.

15 MR. BOYDSTON: Thank you, Your Honor.
16 I understand. Please take a look at what's been
17 marked as Exhibit 21, and are you -- you
18 understand what that document is?

19 (Whereupon, the above-referred to
20 document was marked as IPG Exhibit No. 21 for
21 identification.)

22 THE WITNESS: Yes, it is. Yes, I do,

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1 I'm sorry.

2 BY MR. BOYDSTON:

3 Q And what is it?

4 A This is a printout from the online
5 records of the U.S. Copyright Office, identifying
6 the copyright claimant to the title "AFI Life
7 Achievement Award: A Tribute to Barbara
8 Streisand, an AFI Production."

9 Q And what does say in it to that
10 effect?

11 A It indicates that American Film
12 Institute is the copyright claimant to that
13 particular work.

14 Q Now have you seen any representations
15 in the MPAA materials to the contrary of that?

16 A Yes, I have, and I'm trying to recall
17 which broadcaster it was off the top of my head,
18 that made claim to that particular program. I
19 think it actually appears in some of the MPAA
20 materials that they've or have had introduced to
21 this point.

22 Q And which materials were those if you

1 recall? Was it this spreadsheet that was
2 produced pursuant to discovery, or other material
3 if you know?

4 A Well yes, certainly that. But --

5 Q That meaning?

6 A I'm sorry. It was the Excel
7 spreadsheet that the MPAA produced. It indicated
8 that a broadcaster was being attributed ownership
9 of this particular program by AFI, that was
10 authored by AFI and owned by AFI.

11 Q Did you obtain the documents that
12 comprise Exhibit 21 off the Copyright Office's
13 Internet site?

14 A Yes.

15 MR. BOYDSTON: Your Honor, I'd like to
16 move that Exhibit 21 be admitted.

17 MS. PLOVNICK: Your Honor, I mean I
18 think we have an objection to this. I mean this
19 is -- it is just a search. It's a Copyright
20 Office record. So it's really a public record.

21 MR. MACLEAN: No objection.

22 JUDGE BARRETT: Exhibit 21 is

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1 admitted.

2 (Whereupon, the above-referred to
3 document was received into evidence as IPG
4 Exhibit No. 21.)

5 MR. BOYDSTON: Please take a look at
6 what's been marked as Exhibit 22, and tell me if
7 you are familiar with that document?

8 (Whereupon, the above-referred to
9 document was marked as IPG Exhibit No. 22 for
10 identification.)

11 THE WITNESS: That's a comparable
12 document for the title "DragonBall Z."

13 BY MR. BOYDSTON:

14 Q And does -- DragonBall Z's the title
15 of a program; correct?

16 A Yes.

17 Q And do you know who owns DragonBall Z?

18 A Yes. For the United States it's
19 Funimation, which is an IPG-represented claimant.

20 Q Now have you seen in the MPAA
21 materials information indicating that the
22 broadcaster is claiming the right to collect

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1 royalties for DragonBall Z?

2 A Yes, and that was actually one of the
3 items were addressing yesterday, that I believe
4 was ABC Family Worldwide.

5 Q And did you obtain this document off
6 the Copyright Office Internet site?

7 A Yes.

8 Q And what does this demonstrate, in
9 terms of the ownership of the program involved?

10 A That the copyright claimant for the
11 United States is Toei Animation Company, but with
12 DragonBall Z, the U.S. owner is Funimation
13 Productions.

14 That's why it's also identified as --
15 well, it's interesting, because up here it says
16 "Copyright claimant." But a co-copyright
17 claimant is Funimation Productions.

18 MR. BOYDSTON: Your Honor, I'd like to
19 move Exhibit 22 into evidence.

20 MS. PLOVNICK: I object to the answer,
21 where he was trying to -- Mr. Galaz characterized
22 ownership for the U.S. in this. I don't really

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1 see how that came from this document. We don't
2 have any objection to this document, but his
3 characterization.

4 JUDGE BARRETT: Okay, thank you. The
5 document is admitted. Exhibit 22 is admitted.

6 (Whereupon, the above-referred to
7 document was received into evidence as IPG
8 Exhibit No. 22.)

9 MR. BOYDSTON: Thank you, Your Honor.
10 Please take a look at what's been marked as
11 Exhibit 23. It appears to be a declaration by an
12 individual Tony Intelisano, with Mark Anthony
13 Entertainment. Have you communicated with Mr.
14 Intelsiano?

15 (Whereupon, the above-referred to
16 document was marked as IPG Exhibit No. 23 for
17 identification.)

18 THE WITNESS: Intelsiano.

19 BY MR. BOYDSTON:

20 Q Thank you.

21 A Yes, I have. He's the owner of Mark
22 Anthony Entertainment.

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1 Q And does IPG have a relationship with
2 Mark Anthony Entertainment?

3 A Yes, a contractual relationship.
4 They're an IPG client and have been for several
5 years.

6 Q And in reviewing the MPAA documents
7 and spreadsheet, do you see some indication that
8 the television show Main Floor was being claimed
9 by a broadcaster?

10 A Yes. It indicated that -- and I say
11 "it." Again, the Excel spreadsheet that was
12 provided to IPG indicated that it was being
13 attributed to American Broadcasting Companies for
14 calendar years 2001 and 2002.

15 Q Did you discuss that with Mister --
16 I'll just call him Mr. I?

17 A Yes, I did.

18 Q And what was his reaction?

19 A He confirmed --

20 MR. MACLEAN: Objection, hearsay.

21 MR. BOYDSTON: Withdrawn.

22 JUDGE BARRETT: Thank you.

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1 MR. BOYDSTON: Your Honor, I'd like to
2 move that Exhibit 23 be entered into evidence.

3 MR. MACLEAN: No objection, Your
4 Honor.

5 MS. PLOVNICK: Our only objection is
6 the same objection we're going to renew for
7 paragraph three, regarding the conflicting
8 program claims appearing -- that haven't been
9 listed or produced to us. Otherwise, no
10 objection.

11 JUDGE BARRETT: Exhibit 23 is
12 admitted.

13 (Whereupon, the above-referred to
14 document was received into evidence as IPG
15 Exhibit No. 23.)

16 MR. BOYDSTON: Thank you, Your Honor.
17 Please take a look at what's been marked Exhibit
18 24.

19 (Whereupon, the above-referred to
20 document was marked as IPG Exhibit No. 24 for
21 identification.)

22 THE WITNESS: Okay.

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1 BY MR. BOYDSTON:

2 Q And are you familiar with that
3 document?

4 A Yes, I am.

5 Q And it appears to be another Copyright
6 Office printout from the website, and what is
7 this regarding? What title and what owner?

8 A Right. This is for the television
9 show Beast Wars. As I testified yesterday, it's
10 owned by Mainframe Entertainment, which is an
11 IPG-represented claimant.

12 Q And have you seen material in the MPAA
13 materials that indicate that a broadcaster is
14 making claim through the MPAA for this program?

15 A That's correct. Off the top of my
16 head I can't recall exactly which one, but again
17 this is based on the Excel spreadsheet that was
18 produced to us, pursuant to the Judge's order,
19 with an associated particular program with a
20 particular claimant.

21 MR. BOYDSTON: Your Honor, I'd like to
22 move Exhibit 24 be entered into evidence.

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1 MS. PLOVNICK: No objection.

2 MR. MACLEAN: No objection.

3 JUDGE BARRETT: 24 is admitted.

4 (Whereupon, the above-referred to
5 document was received into evidence as IPG
6 Exhibit No. 24.)

7 MR. BOYDSTON: Thank you, Your Honor.
8 Please take a look at what's been marked as
9 Exhibit 25, and are you familiar with that
10 document?

11 (Whereupon, the above-referred to
12 document was marked as IPG Exhibit No. 25 for
13 identification.)

14 THE WITNESS: Yes, but I want to bring
15 to your attention that part of 25, I think, may
16 have ended up at the end of the prior exhibit,
17 because the prior exhibit, the first page is the
18 copyright search for Beast Wars, and then the
19 second page is also for Beast Wars. But they're
20 two different copyright documents. The third
21 page --

22 MR. BOYDSTON: May I approach, Your

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1 Honor?

2 JUDGE BARRETT: You may.

3 (Pause.)

4 BY MR. BOYDSTON:

5 Q The last -- there should be two pages
6 only in Exhibit 24. If you have a third, it
7 indicates the David Letterman Show. That should
8 be the first page 25. Again, my apologies. Mine
9 is not like that, but that one was, so some may,
10 some may not be.

11 Mr. Galaz, thank you for pointing that
12 out. Do you have an understanding as to whether
13 or not the title represented here on the first
14 page, David Letterman, is that a television show?

15 A Yes, it's a television show.

16 Q And to your knowledge, who is it owned
17 by?

18 A Worldwide Pants, consistent with our
19 own agreements with Worldwide Pants.

20 Q And so IPG has had agreements with
21 Worldwide Pants; correct?

22 A Correct, pursuant to which they've

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1 attested to in their own spreadsheet. The Late
2 Show with David Letterman and Late Late Show as
3 well, which has had a variety of hosts.

4 Q And I see the second page is another
5 Copyright printout that references the Late Late
6 Show; correct?

7 A That's correct, and we presented this
8 as sort of the Late Late Show as being with
9 different hosts, Tom Snyder, Craig Kilborn. I
10 can't recall who after that.

11 Q Have you seen --

12 A I think we're missing Craig Ferguson.

13 Q Have you seen in the MPAA materials
14 information indicating that the broadcaster was
15 making claim for these programs through the MPAA?

16 A Yes. In the MPAA materials, it
17 indicates that CBS Broadcasting is being
18 attributed ownership of all the Worldwide Pants
19 programming, despite the fact -- well, our
20 contract with Worldwide Pants expressly
21 warranties that there has been no grant of those
22 rights specifically to any broadcaster or

1 distributor.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move Exhibit 25 be entered into evidence.

4 MS. PLOVNICK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 25 is
7 admitted.

8 (Whereupon, the above-referred to
9 document was received into evidence as IPG
10 Exhibit No. 25.)

11 THE WITNESS: And I apologize again.
12 I have a fourth page that's the last page of the
13 declaration by John Cosgrove of Cosgrove Meurer
14 Productions.

15 MR. BOYDSTON: Well no. The apology
16 is mine. May I approach, Your Honor?

17 JUDGE BARRETT: You may.

18 MR. BOYDSTON: Thank you.

19 (Pause.)

20 MR. BOYDSTON: At least in this
21 version, that is redundant and can be removed,
22 because it's properly in Exhibit 27, where it's

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1 supposed to be. However, if your Exhibit 27
2 doesn't have a second page, it may be like that
3 version errantly being in 25.

4 MR. MACLEAN: Your Honor, my version
5 has three pages, and it appears to be as the
6 witness explained it.

7 JUDGE BARRETT: We're talking about
8 Exhibit 25 or 26?

9 MR. BOYDSTON: 25 and 27. In the
10 witness' binder, 25 had an extra page at the end,
11 which was a -- the second page of a declaration.

12 JUDGE BARRETT: Oh, okay.

13 MR. BOYDSTON: It appears that maybe
14 that was the only one messed up.

15 (Off mic comment.)

16 MR. BOYDSTON: May I continued, Your
17 Honor?

18 JUDGE BARRETT: You may.

19 MR. BOYDSTON: Please take a look at
20 what's been marked as Exhibit 26, and are you
21 familiar with that Copyright Office printout?

22 (Whereupon, the above-referred to

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1 document was marked as IPG Exhibit No. 26 for
2 identification.)

3 THE WITNESS: All right, yes.

4 BY MR. BOYDSTON:

5 Q And what title does that relate to?

6 A Martha Stewart Living and other
7 titles. But for our purposes, it's Martha
8 Stewart Living that we're focusing on.

9 Q And do you know who owns Martha
10 Stewart Living, or who does this purport to say
11 owns Martha Stewart?

12 A Martha Stewart Living Omnimedia, Inc.

13 Q And does IPG have any relationship
14 with that entity?

15 A We represented them for calendar year
16 2000 exclusively.

17 Q And have you seen any information and
18 materials provided by the MPAA which indicate
19 that a broadcaster is making claim for this
20 program?

21 A CBS Broadcasting for the calendar year
22 2000, for which we're making claim on behalf of

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1 Martha Stewart Living.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move that Exhibit 26 be admitted.

4 MS. PLOVNICK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 26 is
7 admitted.

8 (Whereupon, the above-referred to
9 document was received into evidence as IPG
10 Exhibit No. 26.)

11 MR. BOYDSTON: Thank you, Your Honor.
12 Please take a look at what's been marked as
13 Exhibit 27.

14 (Whereupon, the above-referred to
15 document was marked as IPG Exhibit No. 27 for
16 identification.)

17 THE WITNESS: All right.

18 BY MR. BOYDSTON:

19 Q And that appears to be a declaration
20 by John Cosgrove?

21 A That's correct.

22 Q Are you familiar with Mr. Cosgrove?

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1 A Yes.

2 Q And who does Mr. Cosgrove work for?

3 A Well, he's a principal of Cosgrove
4 Meurer Productions. Their claim to fame is
5 Unsolved Mysteries is a series that they produced
6 for several years.

7 Q And does IPG have a relationship with
8 Mr. Cosgrove's company?

9 A Yes. We represented them for several
10 years under a contract.

11 Q Have you seen materials in the -- or
12 information in the MPAA materials that indicate
13 that a broadcaster is making claim for this in
14 the programming?

15 A Yes, actually a variety of entities.
16 Allied Communications, Equator Films, Westside
17 Studios and I think CBS Broadcasting is also.

18 Q Did you bring that to Mr. Cosgrove's
19 attention?

20 A Yes, I did.

21 Q And did Mr. Cosgrove provide you with
22 this declaration?

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1 A Yes.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move that Exhibit 27 be admitted.

4 MS. PLOVNICK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 27 is
7 admitted.

8 (Whereupon, the above-referred to
9 document was received into evidence as IPG
10 Exhibit No. 27.)

11 MR. BOYDSTON: Thank you, Your Honor.
12 Please take a look at what's been marked Exhibit
13 28. That appears to be a declaration by Rodney
14 Jacobs. Are you familiar with Rodney Jacobs?

15 (Whereupon, the above-referred to
16 document was marked as IPG Exhibit No. 28 for
17 identification.)

18 THE WITNESS: Yes, I am.

19 BY MR. BOYDSTON:

20 Q And who does Rodney Jacobs worth with
21 or for?

22 A He's a principal of Freewheelin' Films

1 and New Vision Syndication.

2 Q And is that entity -- does that entity
3 have a relationship with IPG?

4 JUDGE BARRETT: Hang on, excuse me.
5 Go ahead.

6 BY MR. BOYDSTON:

7 Q Does that entity have a relationship
8 with IPG?

9 A They're an IPG-represented client.

10 Q Have you seen materials in the MPAA
11 materials which indicate that a broadcaster is
12 making claim for that entity's programming?

13 A Yes, ABC, American Broadcasting
14 Company is attributed ownership of, let's see,
15 Inside the Ropes at the Open Championship, Inside
16 the Ropes plain, the Bob Hope Chrysler Classic,
17 Countdown to Daytona, Mountaintop Ski and
18 Snowboarding.

19 I'm sorry, I take that back. It's
20 only one of those. I think Inside the Ropes at
21 the Open Championship attributable to ABC
22 Broadcasting. The other programs I listed are

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1 being attributed to the U.S. Ski and Snowboard
2 Association and PGA Tour, Inc.

3 Q Did you bring that to the attention of
4 Mr. Jacobs?

5 A Yes.

6 Q Did you discuss with him executing
7 this declaration?

8 A Yes, and we also -- I pointed -- I
9 offered a lot of materials, including the -- and
10 that's some of stuff attached to his declaration,
11 the warm sheets that get offered when they go to
12 television markets like NATPE or MIPCOM, that are
13 used to hand out two prospective licensees.

14 MR. BOYDSTON: Your Honor, I'd like to
15 move that Exhibit 28 be admitted.

16 MS. PLOVNICK: No objection.

17 MR. MACLEAN: No objection, sorry.

18 JUDGE BARRETT: Exhibit 28 is
19 admitted.

20 (Whereupon, the above-referred to
21 document was received into evidence as IPG
22 Exhibit No. 28.)

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1 BY MR. BOYDSTON:

2 Q Thank you, Your Honor. Mr. Galaz, in
3 the instances we've just been discussing, do you
4 have an understanding as to whether or not a
5 broadcaster did in fact broadcast these programs?

6 A In most circumstances, there was a
7 network broadcaster that broadcast these. In
8 other circumstances, it wasn't even met.

9 Q Let me ask you to pause. You say in
10 other circumstances, there wasn't even that.
11 Please make that a bit more specific.

12 A That was a circumstance, for instance,
13 with Singsation. Singsation has always been a
14 syndicated show for 25 years. It's not part of
15 the CBS Network. Nonetheless, CBS was -- CBS
16 Broadcasting was attributed ownership of
17 Singsation for one or more years.

18 Q And when you say it was attributed,
19 who was attributing that?

20 A In the Excel spreadsheet that was
21 produced by the MPAA, that linked the programs
22 that were being claimed with a particular

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1 claimant, CBS Broadcasting was being attributed
2 ownership of Singsation.

3 Q Are you aware --

4 MR. MACLEAN: Your Honor, there's been
5 a lot of -- Mr. Galaz has given a lot of
6 testimony about the contents of an MPAA
7 spreadsheet. I'm going to at this point have to
8 object on the basis of best evidence. I think
9 it's a significant issue, and I'm not objecting
10 on relevance. But I would like to see a
11 spreadsheet, so that I have a better
12 understanding of what he's referring to.

13 MR. BOYDSTON: Well, Your Honor, the
14 spreadsheet was produced in discovery to all
15 parties. So it's certainly within the SDC's
16 possession. I don't think there's any mystery
17 about it. Mr. Galaz is testifying as to what he
18 saw there and his summation thereof.

19 I don't think we always need to put
20 every gazillion page document into evidence
21 necessarily. It's fair for a witness to say I
22 read the gazillion pages. This is what I saw.

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1 MR. MACLEAN: Your Honor, if it's a
2 voluminous record, you know, I don't have the
3 spreadsheet in front of me. If it's a voluminous
4 record, then a summary of voluminous records is
5 perfectly acceptable. But a witness ordinarily
6 is not permitted to just testify about the
7 contents of a document, without either having the
8 document present or accounting for its absence.

9 MR. BOYDSTON: Well, I don't think
10 that's a valid objection.

11 JUDGE BARRETT: We do not either have
12 in front of us the spreadsheet, and there's no
13 way we can cross-reference that spreadsheet is
14 done, this 40 minutes of oral testimony.

15 MR. BOYDSTON: May I ask a question of
16 the witness to clarify the base of his knowledge?

17 JUDGE BARRETT: You may.

18 BY MR. BOYDSTON:

19 Q Mr. Galaz, please give us the basis
20 for the knowledge you've been expressing here for
21 the last 40 minutes?

22 A Certainly it's by running searches of

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1 that spreadsheet. To respond to one point that
2 was made, it can't be summarized. It lists every
3 program for every claimant for every year, and as
4 I was indicating early on in my testimony,
5 there's 44,000 of those.

6 JUDGE STRICKLER: I know it couldn't
7 be -- you say it couldn't be summarized, but it
8 could be excerpted, couldn't it, to identify the
9 lines that you are testifying to.

10 THE WITNESS: It could be excerpted,
11 where I could print out and format it, in order
12 to actually put on a sheet. But it would have to
13 be formatted to then, and I guess falling to that
14 particular sheet to show that, and we could do
15 that.

16 JUDGE STRICKLER: But you didn't do
17 it?

18 THE WITNESS: I didn't think it was
19 necessary.

20 JUDGE STRICKLER: How many lines will
21 you be required to excerpt and manipulate
22 computer-wise in that manner?

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1 THE WITNESS: Well, the document
2 itself, as I was indicating, has 44,000 and I
3 guess divided by 50, however many pages that
4 would be that we would be going through and
5 printing out whatever pages were being addressed,
6 particularly by these particular challenges.

7 JUDGE STRICKLER: Well the challenge
8 -- I'm sorry.

9 JUDGE BARRETT: Go ahead.

10 JUDGE STRICKLER: The challenges
11 you're referring to are all the ones that you've
12 just testified to, right?

13 THE WITNESS: That's correct.

14 JUDGE STRICKLER: So how many? I
15 wasn't keeping count. How many are we talking
16 about, ballpark?

17 MR. BOYDSTON: I'd say ballpark.

18 JUDGE STRICKLER: Okay. So you would
19 need to excerpt from this voluminous Excel
20 spreadsheet?

21 THE WITNESS: Yeah, or we could
22 produce it, I suppose, if the Judges would

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1 prefer, because maybe it would enlighten them
2 about, that we could simply give them what was
3 provided to us, which is a single program -- not
4 a single program. A single file that can be
5 opened in Excel. It has multiple tabs, 2000,
6 2001, 2002 and all the information that I've
7 described previously.

8 JUDGE BARRETT: May I ask if we can
9 identify the spreadsheet? The Judges did request
10 a spreadsheet with specifics about claims. There
11 might have been there spreadsheets that are
12 involved here.

13 I mean we're discussing a spreadsheet,
14 and I think spreadsheets have been, you know,
15 lousy in this or this proceeding has been lousy
16 with spreadsheets. So let's ask the witness
17 which spreadsheet. We might have it.

18 MR. BOYDSTON: I will, Your Honor.

19 JUDGE BARRETT: It doesn't make it any
20 easier for us to peruse it or to find what Mr.
21 Galaz is testifying about, but we might have it.

22 BY MR. BOYDSTON:

1 Q Yes, Your Honor. Mr. Galaz, can you
2 identify the spreadsheet?

3 A If I could actually get up and pull
4 something on my desktop, I can actually give you
5 the description of how it was provided to us
6 electronically.

7 MR. BOYDSTON: Your Honor I --

8 JUDGE BARRETT: Just do you know
9 whether it is -- it was produced to you as a
10 discovery response, or if it was copied to you
11 because it was provided to the Judges?

12 THE WITNESS: It was produced in
13 discovery pursuant to the Judge's July 30, 2014
14 order.

15 JUDGE BARRETT: Thank you.

16 MR. BOYDSTON: I observe its 2:31.
17 Theoretically we could do this on a break.

18 JUDGE BARRETT: Well then keep going,
19 because we're going til 4:30. Let's not break
20 this early in the afternoon. During the break,
21 if you want to do a little more digging, Mr.
22 Boydston, you may.

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1 MR. BOYDSTON: Thank you, Your Honor.

2 JUDGE BARRETT: Ms. Plovnick, I'm
3 sorry. I beg your indulgence. Is the O in your
4 name a long O or a short O?

5 MS. PLOVNICK: Just Plov-nick.

6 JUDGE BARRETT: Plovnick, thank you.
7 Ms. Plovnick.

8 MS. PLOVNICK: Yeah. I was just going
9 to say, the particular discovery production, the
10 cover letter showing where it was produced was
11 MPAA Exhibit 333, which was already produced, and
12 has the name of the file and the date we produced
13 it in discovery.

14 JUDGE BARRETT: Okay, thank you. But
15 that doesn't mean the Judges have it.

16 MS. PLOVNICK: I know, Your Honor.
17 But just for purposes of clarifying, I think that
18 is not the file that --

19 JUDGE STRICKLER: Thank for that. We
20 have a rule, 351.10(c)(3) about summary exhibits,
21 and it says in part "The contents of voluminous
22 writings, recordings or photographs which cannot

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1 conveniently be examined in the hearing, may be
2 presented in the form of a chart, summary or
3 calculation."

4 The witness sounds like he's done a
5 summary of the excerpts that he's been talking
6 about, and the rule goes on and says "The
7 originals or duplicates shall be made available
8 for examination or copying or both by other
9 parties at a reasonable time and place."

10 Now in this particular case, the
11 documents in question, the Excel spreadsheet, is
12 something that you provided in discovery.

13 MS. PLOVNICK: Yes, Your Honor.

14 JUDGE STRICKLER: Do you have access
15 to it electronically now?

16 THE WITNESS: I do, Your Honor.

17 JUDGE STRICKLER: Well, let me just
18 have her answer.

19 MS. PLOVNICK: I mean we could obtain
20 a copy. We have one laptop here. I did not
21 bring a disk or anything with it on with me.
22 However, our offices are in D.C. We could obtain

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1 a copy. We might be able to pull it up on our
2 laptop.

3 JUDGE STRICKLER: I think we're going
4 to have to talk about this during the break
5 amongst ourselves. But my point was not
6 necessarily that we need to see it.

7 But the point, as it relates generally
8 to summary exhibits or in this case, apparently
9 summary testimony, to the extent that's
10 sufficient, is that you have an opportunity to
11 cross-examine, to determine whether or not the
12 summaries, excerpted summary can be attacked or
13 impeached in any way, by having the underlying
14 document.

15 Since they're your underlying
16 documents and you have access to them --

17 MS. PLOVNICK: Yes, Your Honor, and we
18 --

19 JUDGE STRICKLER: Let me just finish
20 it up. You're not necessarily hamstrung by the
21 witness' testimony about this, summarizing
22 excerpts, because you have the whole thing within

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1 your own files.

2 MS. PLOVNICK: This wasn't our
3 objection.

4 (Laughter.)

5 MS. PLOVNICK: We do have it, yes Your
6 Honor, and we did produce it, and I believe we
7 produced it to SDC.

8 JUDGE STRICKLER: I'm advised that it
9 was not your objection. So let me direct the
10 line of questioning, then, to Mr. MacLean. Mr.
11 MacLean, you can do the same, right?

12 MR. MACLEAN: Your Honor, it was my
13 objection. I did not mean to sidetrack the
14 proceedings.

15 (Simultaneous speaking.)

16 MR. MACLEAN: And at this point, I
17 will withdraw the objection.

18 JUDGE BARRETT: Thank you. Go ahead,
19 Mr. Boydston.

20 MR. BOYDSTON: Has Exhibit 28 been
21 admitted? That was a long way back to where we
22 started.

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1 JUDGE BARRETT: Exhibit 28 is
2 admitted.

3 MR. BOYDSTON: Thank you, Your Honor.
4 Let me ask you to take a look at
5 Exhibit 29.

6 MR. GALAZ: All right.

7 BY MR. BOYDSTON:

8 Q And Exhibit 29 appears to be -- it's
9 entitled Notice Regarding Programing of
10 Watercourse Road Productions. And it is
11 essentially a testimonial by Tom Moyer.

12 Are you familiar with Mr. Moyer?

13 A Very well.

14 Q And are you familiar with Watercourse
15 Road Productions?

16 A Very well.

17 Q And is there a relationship between
18 those two?

19 A Tom Moyer is the principal of
20 Watercourse Road Productions. This document was
21 actually filed in the 2000 and 2003 proceedings
22 at the request of Mr. Moyer who was if the Judges

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1 may recall going to be one of the witnesses at
2 the final distribution hearing.

3 But ultimately his testimony was
4 disallowed.

5 Q And does IPG have a relationship with
6 Watercourse Road Productions?

7 A They've been a long time IPG
8 represented claimant.

9 Q Are you aware of what programming
10 Watercourse Road Productions owns?

11 A It has a single program entitled
12 Critter Gitters that has been on air since I
13 think 1998 through the better part of the first
14 decade of you know, 2003, 2010 I believe.

15 Q And did Litton and IPG ever have a
16 contractual relationship?

17 A Litton Syndications was also
18 represented by IPG. And it was also I think,
19 perhaps the second or third client that we ever
20 had.

21 Q And when IPG entered into an agreement
22 with Litton, did IPG obtain from Litton details

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1 about what program Litton owned or didn't own?

2 A Yes.

3 Q Or was -- had rights to?

4 A Yes. The contract that was entered
5 into between IPG and Litton had some specified
6 which program they had at that point in time.
7 And Critter Gitters was one of them.

8 Q And for what years did Litton have the
9 rights to Critter Gitters?

10 A Allow me to refresh my recollection.
11 The contract between IPG and Litton, Litton
12 specifically specified that it only had rights
13 through June 1999.

14 Q Now in review of the MPAA documents,
15 and the spreadsheet et cetera, have you seen any
16 indication of any entities making claim for the
17 program Critter Gitters?

18 A Critter Gitters is attributed for each
19 and all years to Litton Syndications. And that
20 was actually the case also in 2000 and 2003
21 proceedings, which is what raised the ire of Mr.
22 Moyer and resulted in him preparing the document

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1 we were just looking at that ultimately got
2 banned from the record. And which he was very
3 animated about.

4 Q Well I think it's obvious to me why it
5 raised his ire. But perhaps did he explain --

6 MR. MacLEAN: Objection.

7 MR. BOYDSTON: I haven't gotten it out
8 yet.

9 Did he explain to you what raised his
10 ire?

11 MR. GALAZ: Yes.

12 MR. MacLEAN: Move to strike what is
13 obviously Mr. Boydston's.

14 MR. BOYDSTON: Fair enough,
15 stipulated.

16 Did he explain that?

17 MR. GALAZ: Yes. He indicated as is
18 consistent with the agreement that IPG had
19 entered into with Litton Syndications that Litton
20 only had a relationship with him for a brief
21 period of time. I think he said that they were
22 distributor for one year. And consistent

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1 therewith that their rights concluded in June
2 1999.

3 Subsequent to that Mr. Moyer and
4 Watercourse Road Productions was a -- they self-
5 distributed the program Critter Gitters. And
6 they're the owner, they're the distributor,
7 there's literally no one else in the chain of
8 title or having anything else to do with it.

9 So when they discovered that in the
10 2000 and 2003 proceeds that it was being claimed
11 on behalf of Litton, and continues to be
12 attributed to Litton and claimed by Litton in
13 these proceedings, throughout these proceedings,
14 he's obviously upset.

15 BY MR. BOYDSTON:

16 Q Now once again, you said that IPG had
17 an agreement with Critter Gitters for one year,
18 '98, '99 I think you said one of those. And
19 Critter Gitters was properly being credited to
20 Litton at that time, correct?

21 A You misspoke. What we had, an
22 agreement with Litton Syndications. The

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1 agreement with Litton Syndications reflects on
2 the face of the document that their rights to
3 Critter Gitters expire in June 1999.

4 Q And yet what you've seen in the MPAA
5 information is that despite that for these years
6 since then, they continue to receive the credit.

7 A Every year.

8 Q And that's why Mr. Moyer is miffed?

9 A Correct.

10 MR. BOYDSTON: Your Honor, I'd like to
11 move Exhibit 29 be entered into evidence.

12 MS. PLOVNICK: I have an objection
13 Your Honor. The bottom of the first page of IPG
14 Exhibit 29, there is a legal conclusion at the
15 bottom of that page and the sentence continuing
16 over to the following page.

17 So we think that this is improper
18 opinion testimony by a fact witness that isn't
19 present.

20 MR. BOYDSTON: I think I stipulated to
21 that. You're referring to the underscored
22 portion?

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1 MS. PLOVNICK: Yes.

2 MR. BOYDSTON: I would stipulate that
3 that be stricken.

4 JUDGE BARRETT: Okay.

5 MR. BOYDSTON: Is it admitted
6 otherwise?

7 JUDGE BARRETT: Yes. Exhibit 29 is
8 admitted with the last sentence on the first page
9 carrying over to the second page. Actually the
10 first clause of the last sentence, beginning on
11 the bottom of the first page carrying over to the
12 top of the second page stricken.

13 (Whereupon, the above-referred to
14 document was received into
15 evidence as IPG Exhibit No. 29.)

16 MR. BOYDSTON: Thank you, Your Honor.

17 Mr. Galaz, please take a look at
18 what's been marked as Exhibit 30.

19 MR. GALAZ: All right.

20 BY MR. BOYDSTON:

21 Q And tell me, are you familiar with
22 that document?

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1 A Yes I am. This is the agreement that
2 I was just referring to in my testimony, the
3 original agreement between Worldwide Subsidy
4 Group and Litton Syndications.

5 And the specific aspect that I was
6 referring to is the last page of it which
7 identifies the schedule of programs for which
8 Litton was making claim. Is, if you see the next
9 to last one, it indicates Critter Gitters until
10 June 15, 1999.

11 MR. BOYDSTON: Your Honor, I'd like to
12 move that Exhibit 30 be admitted.

13 MS. PLOVNICK: We have no objection.

14 MR. MacLEAN: No objection, Your
15 Honor.

16 JUDGE BARRETT: Exhibit 30 is
17 admitted.

18 (Whereupon, the above-referred to
19 document was received into
20 evidence as IPG Exhibit No. 30.)

21 MR. BOYDSTON: Thank you, Your Honor.
22 Please take a look at what's been

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1 marked as Exhibit 31.

2 MR. GALAZ: All right.

3 BY MR. BOYDSTON:

4 Q And are you familiar with that
5 document?

6 A Yes I am.

7 Q It purports to be the declaration of
8 Steven Hoyt of an entity called Global Response.
9 Are you familiar with Mr. Hoyt and Global
10 Response?

11 A Yes I am.

12 Q Is Global Response -- does Global
13 Response have a relationship with IPG?

14 A Yes, as -- I think most of these
15 declarations are predicated on that, it's
16 referenced in his paragraph three.

17 Q And are you familiar with programming
18 for Global Response, LLC?

19 A Yes. They only had a single program,
20 Jaw Droppers.

21 Q And at some point did you see
22 information in the MPAA materials that indicated

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1 that an entity other than Global Response was
2 being credited with Jaw Droppers?

3 A Yes.

4 Q And what was that?

5 A Hawthorne Communications.

6 Q And did you bring that to the
7 attention of Mr. Hoyt?

8 A Yes.

9 Q And did he confirm that that was the
10 case or disagree?

11 A He confirmed that ownership has always
12 been with Global Response, LLC. He was actually
13 familiar with Hawthorne Communications and
14 indicated that they'd been hired to render
15 production services in connection with the
16 production of the infomercial Jaw Droppers.

17 But that was the only basis of their
18 communication -- the only basis of their
19 involvement.

20 MR. BOYDSTON: Your Honor, I'd like to
21 move to admit Exhibit 31.

22 MS. PLOVNICK: No objection.

1 MR. MacLEAN: No objection.

2 JUDGE BARRETT: Exhibit 31 is
3 admitted.

4 (Whereupon, the above-referred to
5 document was received into
6 evidence as IPG Exhibit No. 31.)

7 MR. BOYDSTON: Thank you, Your Honor.

8 Please take a look at what's been
9 marked as Exhibit 32, which purports to be a
10 declaration by Maureen Millen. And are you
11 familiar with this document? Strike that.

12 Are you familiar with Maureen Millen?

13 MR. GALAZ: Yes. Very familiar with
14 Ms. Millen.

15 BY MR. BOYDSTON:

16 Q And I believe her company is IWV, is
17 that correct.

18 A She's got several companies. IWV
19 Media Group is one of them.

20 Q And is IWV Media Group an IPG
21 claimant?

22 A Yes. We've represented IWV for

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1 several years as her other companies as well.

2 Q And at some point did you come to the
3 conclusion from looking at the MPAA materials
4 that some entity other than IWV Media Group was
5 making claim to IWV Media Group programming?

6 A Yes.

7 Q And what was that?

8 A Specifically the program Healthy
9 Living was being attributed to Transworld
10 International.

11 Q Did you bring that to Ms. Millen's
12 attention?

13 A Yes.

14 Q And did she affirm or deny that?

15 A She affirmed that Healthy Living was

16 --

17 MR. MacLEAN: Objection. Hearsay.

18 JUDGE BARRETT: Is this information in
19 the declaration?

20 MR. BOYDSTON: I believe so.

21 JUDGE BARRETT: Okay.

22 MR. BOYDSTON: Let me ask. I believe

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1 that information is consistent with the
2 declaration, is that correct?

3 MR. GALAZ: Yes. Yes.

4 MR. BOYDSTON: Your Honor, may I move
5 to admit Exhibit 32?

6 JUDGE BARRETT: The objection is
7 sustained. Ms. --

8 MS. PLOVNICK: I have an additional
9 objection. And this is regarding the numbered
10 paragraph three. She makes a reference to having
11 reviewed the competing program claim information.
12 And that's not attached.

13 And it's also, I raise it specifically
14 with regard to this entity because I think as
15 you'll see later, there's some confusion over the
16 names of these titles and whether or not what is
17 being you know, MPAA attributed to Transworld is
18 in fact the same program that IWV Media Group is
19 claiming.

20 And so we don't know exactly what she
21 reviewed to come to the conclusion that it was
22 her program. So this is incomplete. And we'd

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1 object on that basis.

2 MR. BOYDSTON: Your Honor, may I ask
3 some questions and lay that further foundation?

4 JUDGE BARRETT: You may.

5 BY MR. BOYDSTON:

6 Q Did you provide Ms. Millen with any
7 materials when you discussed this other entity
8 with her?

9 A Yes I did.

10 Q And what did you provide her?

11 A It was in fact excerpts from the Excel
12 spreadsheet that had been provided to us by the
13 Motion Picture Association of America. It
14 indicated that Transworld International was
15 making claim not just for Healthy Leaving, but
16 for Healthy Leaving Parenting and Beyond, which I
17 would argue is not an IWV Media Group Production,
18 but Five Star Productions, another IPG
19 represented claimant.

20 But then they were also making claim
21 for the Healthy Living series that is owned by
22 IWV Media Group.

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1 MR. MacLEAN: Your Honor, at this
2 point I am going to renew my objection based on
3 best evidence. That excerpt was not provided to
4 us in discovery and it should have been.

5 MR. BOYDSTON: May I ask when the
6 excerpt was obtained? I don't think it was
7 consistent with the discovery production. But I
8 may ask questions to establish a foundation.

9 JUDGE BARRETT: Yes.

10 BY MR. BOYDSTON:

11 Q The date -- I know that the date of
12 this declaration is October 13, 2014. Do you
13 recall roughly at what point in time you provided
14 Ms. Millen with the materials you just described?

15 A Yes. It was approximate to the
16 declaration. And it was only in response to the
17 issues that were raised by the MPAA rebuttal.

18 As I indicated, it was information to
19 confirm the MPAA produced Excel spreadsheet that
20 came mid-August following the Judge's July 30
21 Order. And the -- while the excerpt wasn't --
22 that page wasn't printed out and given to any

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1 particular party, the Excel spreadsheet was
2 produced by the MPAA to all parties.

3 MS. PLOVNICK: Your Honor, just for a
4 point of clarification, this declaration is dated
5 October 13, 2014. But MPAA's written rebuttal
6 statement was filed on October 15, 2014.

7 So this, I think was in IPG's written
8 rebuttal statement, not responding to MPAA's.

9 MR. MacLEAN: And Your Honor, I want
10 to point out first of all, the parties have
11 continuing discovery obligations. The date when
12 this excerpt was produced or was generated, is
13 irrelevant to the question of whether it should
14 have been produced.

15 Secondly, my objection is not only a
16 discovery objection, it's an evidentiary
17 objection, best evidence. We should -- if
18 there's going to be testimony about a summary of
19 voluminous documents that summary should be in
20 front of us so that the parties can read it.

21 I don't read the Judge's rules
22 regarding summaries of voluminous records as

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1 meaning a witness can just orally testify about
2 the contents of voluminous documents. I read it
3 to say that the summary itself will be the
4 document.

5 And it's not a substitute. It's not
6 to allow witnesses to simply testify. We need
7 that summary. The summary that these witnesses
8 are testifying to.

9 MR. BOYDSTON: Your Honor -- oh, I'm
10 sorry.

11 MS. PLOVNICK: I was just going to
12 say. We certainly have the whole spreadsheet.
13 So, and I think maybe -- that's not a question.
14 We just don't know what Ms. Millen reviewed.

15 I think that's my objection. Is that
16 I don't know what was shown to Ms. Millen. I
17 know what the whole 44 -- the whole record looks
18 like, but I don't know what she saw.

19 JUDGE STRICKLER: I think that
20 objection is well placed. But she does say in
21 paragraph four of her certification, she does
22 have this to say, identifies two particular

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1 series, Healthy Living and Healthy Living
2 Mysteries of the Mind.

3 Now she claims that she's been shown
4 or sees a conflict between different documents as
5 to who is entitled to make the claim on her
6 company's behalf. There is no information in
7 there to tell us what she relied on.

8 So it may well be the case that IPG
9 has to prove that they -- or assert that there
10 was a conflict. And then you can rebut that as
11 to whether there indeed was a conflict.

12 But her self-serving statement without
13 more, will be given whatever weight we can give
14 it in the absence of anything to corroborate it.
15 But it may be it's not a question of best
16 evidence, it's more a question of other -- there
17 is other evidence that supports or does not
18 support the allegation of a conflict.

19 MR. MacLEAN: Well, Your Honor, I do
20 think it's a question of best evidence because
21 she is testifying to the contents of whatever it
22 was she was provided. I recognize that there are

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1 statements in this declaration that do not
2 testify to the contents of the document.

3 My objection is addressed particularly
4 to paragraph three and five of the declaration.
5 I will also say I cannot quite make out what
6 paragraph six says in my copy. But at any rate,
7 I object to paragraphs three and five and we move
8 to strike.

9 MR. BOYDSTON: Why five? I understand
10 three. I don't see anything in five that refers
11 to the other materials.

12 MR. MacLEAN: The first -- well, I
13 would say I would move to strike the first
14 sentence of paragraph five, which at least in
15 context appears to me to be based on something
16 she saw in a summary that was produce to her,
17 that was saw by her.

18 MR. BOYDSTON: Well, there's also
19 evidence that it was explained to her. It was
20 told to her.

21 JUDGE BARRETT: Excuse me. She named
22 two programs and then she said royalties

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1 attributable to each of the foregoing series. I
2 take that as a direct reference to the preceding
3 paragraph.

4 And you know, I could be wrong. We
5 can only look at what we have. We can only
6 interpret it and give it whatever weight is
7 appropriate under the circumstances.

8 So Exhibit 32 is admitted and the
9 Judges will weigh it and determine whether it has
10 value or not. Probative value.

11 (Whereupon, the above-referred to
12 document was received into
13 evidence as IPG Exhibit No. 32.)

14 MR. BOYDSTON: Thank you, Your Honor.
15 Please take a look at what's been
16 marked as Exhibit 33. It purports to be a
17 declaration by Jonathan Plowman of Questar.

18 MR. GALAZ: Questar.

19 BY MR. BOYDSTON:

20 Q Are you familiar with this person and
21 entity?

22 A Yes I am.

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1 Q And is Questar a claimant, an IPG
2 claimant?

3 A Yes. They have been for -- Questar
4 has been an IPG represented claimant for several
5 years.

6 Q And what programming do they own as
7 far as has been explained to you?

8 A They have an extensive array of
9 programming. The one that's at issue for
10 purposes of this proceeding was just the program
11 It's a Miracle. Which was being claimed
12 according to again, the spreadsheet that was
13 given to us by the MPAA, by DTG Communications.

14 Q And did you bring that to the
15 attention of Mr. Plowman?

16 A Yes. And in response thereto he
17 prepared this declaration for me.

18 MR. BOYDSTON: Your Honor, I'd like to
19 move that Exhibit 33 be admitted.

20 MS. PLOVNICK: Your Honor, I have two
21 objections. One is just to renew my objection to
22 paragraph three. It's the exact same language.

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1 It's the same objection.

2 And then I also further object that
3 this document is not dated and therefore it is
4 incomplete and unclear.

5 MR. BOYDSTON: Well, Your Honor, it is
6 undated, but it's clear it was made sometime in
7 October 2014. And I'm not sure if lack of a more
8 specific date is of any consequence. But you can
9 put that into the weight I suppose.

10 MR. MacLEAN: Your Honor, may I have
11 a word here.

12 JUDGE BARRETT: You may.

13 CROSS EXAMINATION

14 BY MR. MACLEAN:

15 Q Mr. Galaz I believe you just said this
16 declaration was prepared by Mr. Plowman?

17 A After speaking with him, the form was
18 sent to him for his review and revision to the
19 extent it was necessary.

20 Q Okay, you used the passive voice
21 there. A form was prepared for him?

22 A With each of these, we followed a

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1 certain form. Parties don't necessarily know how
2 to prepare a declaration and what needs to be in
3 a declaration.

4 So we would prepare the declaration
5 for them with the necessary language. And submit
6 that to them.

7 Q And you mean you would prepare?

8 A I did, personally, yes.

9 Q You did personally?

10 A I did personally.

11 Q Okay. And when you say a form, you
12 mean you put the caption on the top, the word
13 declaration, signature line on the bottom?

14 A It would be actually the caption, I
15 think what I gave to parties would say I blank,
16 swear under penalty of perjury the following is
17 true and correct. I know that I would never know
18 who was going to -- I would have the date October
19 blank because it was during October.

20 I wouldn't know who necessarily was
21 going to be executing it. Some of the parties
22 revised their's to type in their name rather than

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1 have a printed name. They just simply typed it
2 in themselves. They would make revisions to the
3 form themselves.

4 Q And the remainder of the content of
5 the declaration, would you provide as part of the
6 draft that you created?

7 A I'm sure paragraph one was part of the
8 form. Paragraph two, probably started off, I am
9 an authorized representative of blank. And then
10 the rest was all subject to the conversations
11 that we had with the particular party that we
12 were asking to execute a declaration.

13 Q And the rest would be drafted by you
14 at least initially?

15 A In some cases yes. In some cases no.

16 Q Okay well, we're talking specifically.

17 MR. BOYDSTON: Your Honor, I believe
18 that we are under the clock here and we're trying
19 to get out of here by Thursday, tomorrow. And I
20 think you've voir dired the heck out of this
21 issue.

22 MR. MacLEAN: We're talking about IPG

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1 33 was this one. Was the content of this
2 declaration drafted by you?

3 MR. GALAZ: I don't recall. I don't
4 recall if I did it following a conversation with
5 him or then sent it to Questar and had them fill
6 it in. I just don't recall.

7 MR. MacLEAN: No objection to this
8 Exhibit, Your Honor.

9 JUDGE BARRETT: Exhibit 33 is
10 admitted.

11 (Whereupon, the above-referred to
12 document was received into
13 evidence as IPG Exhibit No. 33.)

14 MR. BOYDSTON: Thank you, Your Honor.

15 Mr. Galaz, obviously what we've just
16 seen are a number of IPG represented claimants
17 for whom their programs are being claimed by the
18 MPAA through a broadcaster or another entity.
19 Have you done a calculation as to how many, not
20 just the ones we've discussed, but how many total
21 you found like that?

22 MR. GALAZ: We found -- I mean the

1 calculations that we put in is that I think of
2 our group of represented claimants 98 of them
3 have one or more of their claimed programs also
4 being claimed by the MPAA. I'm refreshing my
5 recollection by looking at my declaration of
6 those, there's 1,872 program year combinations.

7 And of that 1,872, 761 of them are
8 being attributed to entities for which there is
9 literally no paper between the purported
10 copyright owner and the MPAA. Not an
11 identification of titles, not a contract, not an
12 item of correspondence. Literally nothing.

13 That's one calculation that's been
14 done. With regard to the other calculations that
15 you were asking me about, it's almost too
16 difficult to do.

17 When you go through this and you start
18 seeing the number of circumstances in which a
19 program is being attributed to some that you just
20 know is not correct. And we attempted to present
21 exemplars so to speak. Because we couldn't get
22 to all of them.

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1 If we were going to all of them,
2 literally you know, with focusing on copyright
3 registrations and this and that, it would have, I
4 mean it could take a year.

5 BY MR. BOYDSTON:

6 Q Thank you. Now at some point in time
7 IPG and Fintage Publishing -- well, strike that.

8 At some point in time did IPG and
9 Fintage Publishing have an agreement with each
10 other?

11 A Yes. We were representing their U.S.
12 interest and they were representing -- we were
13 representing their North American interest and
14 they were representing our interests in Europe.

15 Q In that regard did IPG and Fintage
16 jointly enter into contracts with certain
17 programmers?

18 A Yes.

19 Q Were some of those programmers Spanish
20 language programmers?

21 A Yes.

22 Q Do you recall any of them?

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1 A Two in particular. TV Azteca and
2 Televisa. They were in fact clients that were
3 secured by me following my visit to their offices
4 in Mexico City.

5 Q Let me ask you to take a look at
6 what's been marked as Exhibit 34. Do you
7 recognize that document?

8 A Yes. It was the contract that was
9 entered into between the joint venture of Fintage
10 WSG and Televisa.

11 Q And --

12 A And you can see my signature on, I
13 believe the third page.

14 MR. BOYDSTON: Your Honor, I'd like to
15 move that Exhibit 34 be admitted.

16 MS. PLOVNICK: No objection.

17 MR. MacLEAN: No objection.

18 JUDGE BARRETT: Exhibit 34 is
19 admitted.

20 (Whereupon, the above-referred to
21 document was received into
22 evidence as IPG Exhibit No. 34.)

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1 MR. BOYDSTON: Thank you, Your Honor.

2 Now at some point did those entities
3 -- excuse me, before I do that. Please take a
4 look at what's been marked as Exhibit 35 and tell
5 me if you recognize that?

6 MR. GALAZ: That was the agreement
7 entered into between the joint venture of Fintage
8 WSG and TV Azteca.

9 MR. BOYDSTON: Now at some point were
10 these two -- oh, I'm sorry, Your Honor, I move to
11 admit Exhibit 35.

12 MS. PLOVNICK: No objection.

13 MR. MacLEAN: No objection.

14 JUDGE BARRETT: 35?

15 MR. BOYDSTON: At some point in time
16 were these agreements terminated?

17 JUDGE BARRETT: I'm sorry, did -- we
18 were looking at 34 and you asked for admission of
19 35?

20 MR. BOYDSTON: I did, I'm sorry, Your
21 Honor, I --

22 JUDGE BARRETT: 34 was admitted.

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1 MR. BOYDSTON: Yes. I was asking for
2 the admission of 35.

3 JUDGE BARRETT: Okay. And there's no
4 objection to that as well?

5 MS. PLOVNICK: No.

6 JUDGE BARRETT: Okay. 35 is admitted.

7 (Whereupon, the above-referred to
8 document was received into
9 evidence as IPG Exhibit No. 35.)

10 BY MR. BOYDSTON:

11 Q At some point in time -- are you aware
12 as to whether or not at some point in time these
13 two contracts were terminated?

14 A . Yes.

15 Q And when did that happen?

16 A It was I recall, following my
17 incarceration. I can actually picture the
18 letters sitting on my desk. And a little
19 background is we had parted ways with Fintage at
20 some point in I believe 2002/2003.

21 And had agreed that the benefits of
22 this contract could be continued to be held by

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1 Fintage. We basically wanted a divorce. And
2 said we're going to take these and you can take
3 those. And that was the agreement.

4 Nonetheless, I received a notice of
5 termination of this. And why it caught my
6 attention so much was that one of them was very,
7 very harshly worded. And this was probably a
8 long time, a couple of years after we had already
9 separated ways with Fintage.

10 Nonetheless, we had received the
11 termination notice along with Fintage.

12 Q Do you remember approximately when
13 that was?

14 A I was trying to narrow it down before
15 because I can actually recall seeing it on my
16 desk in a house that I was living in in 2006 to
17 2007. So I know at that point, by that point, it
18 had already been in and it might have been
19 sometime earlier than that.

20 The only clear date that I had in my
21 mind is that it was -- that it post-dated my
22 incarceration by a year or two.

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1 Q Now during the time that Fintage and
2 IPG were working together, did it enter into any
3 agreements with EGEDA?

4 A We also entered into an agreement with
5 EGEDA.

6 Q And did EGEDA -- what was the nature
7 of that and what did EGEDA do?

8 A Well, it was -- it was similar to the
9 extent that we were going to represent EGEDA to
10 the extent that they had any right -- to the
11 extent that they had any rights outside of the
12 United States as an agent, we were going to
13 represent those interests.

14 Q Going back to Televisa SA and TV
15 Azteca, you explained that you got termi -- you
16 got a notice of termination in 2006 or 2007. In
17 reviewing the MPAA materials that you were
18 provided with, did you see any indication or any
19 evidence that Fintage was being accorded the
20 right to collect royalties on behalf of Televisa
21 SA and TV Azteca?

22 A Yes I did. The evidence that was

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1 produced in discovery was that the programming
2 claimed by Televisa and TV -- or I should say
3 accorded to Televisa and TV Azteca was being
4 claimed by Fintage.

5 TV Azteca and Televisa of course don't
6 have contracts with the MPAA. Fintage has a
7 contract with the MPAA. No termination notices
8 were provided even though I know that they exist.

9 And quite frankly, I would have them,
10 but for the fact that we no longer represented
11 Televisa and TV Azteca, and I saw no reason to
12 keep them. However, I recall them. And the one
13 that I told you about that I recall in particular
14 was with Televisa, because it was very, very
15 harshly worded.

16 Q Now, getting over to --

17 JUDGE BARRETT: Mr. Boydston, I'm
18 sorry. We're going to take a break at this time.

19 MR. BOYDSTON: Okay. Just for
20 everyone's planning, I have just -- not that I
21 want to keep going. I just have a couple of
22 questions left and then I will be done with Mr.

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1 Galaz.

2 JUDGE BARRETT: Thank you. 15
3 minutes.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:02 p.m. and
6 resumed at 3:22 p.m.)

7 JUDGE BARRETT: Please be seated. Mr.
8 Boydston.

9 MR. BOYDSTON: Thank you, Your Honor.
10 I think when we broke, we were talking about the
11 empty EGEDA and the fact that the IPG-Fintage
12 joint venture had entered into an agreement with
13 EGEDA, do you recall that?

14 THE WITNESS: That's correct.

15 BY MR. BOYDSTON:

16 Q And pursuant to that agreement, what
17 did EGEDA do?

18 A Well, EGEDA gave us the identity of
19 the various entities with which it had
20 affiliated, that is, according to -- they claim
21 in the United States they were all
22 Spanish-language entities, and I think my

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1 recollection was that they were almost all from
2 Spain. There were a few other Spanish-language
3 territories, but generally, they were all from
4 Spain.

5 Q Now when IPG and EGEDA -- and Fintage,
6 rather, split apart, who took over the duties to
7 deal with the EGEDA properties in the United
8 States, Fintage or IPG?

9 A Fintage. We went through our --
10 basically went through a divorce with them and
11 went through any claim to the EGEDA contract.

12 Q Now did EGEDA ever provide IPG and
13 Fintage with evidence showing that it indeed had
14 contractual rights with the entities it purported
15 to represent?

16 A No.

17 Q And what were some --

18 JUDGE BARRETT: I'm sorry -- did whom?

19 MR. BOYDSTON: Sorry, Your Honor. I
20 was referring to this entity EGEDA, which is a
21 Spanish identity -- .

22 JUDGE BARRETT: Okay, all right. I

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1 just --

2 MR. BOYDSTON: -- and whether or not
3 they ever identified -- or provided IPG and
4 Fintage with evidence to show that they actually
5 had contractual relationships with the property
6 owners they claimed to represent.

7 THE WITNESS: And the answer was no,
8 they have not.

9 BY MR. BOYDSTON:

10 Q And do you recall the names of some of
11 those entities?

12 A No, actually, I don't. There's,
13 literally, there's lots of them.

14 Q Have you seen in looking at the MPAA
15 information that we've been discussing here
16 today, have you seen the names of some of those
17 entities -- did you recognize the names of some
18 of those EGEDA entities as being entities now for
19 which MPAA is making claim?

20 A There are some, but predominantly, the
21 programs that -- yes, there are some, because I
22 went back and I compared the list of entities

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1 that EGEDA had reported to us and those that were
2 being claimed by the MPAA where Fintage is
3 identified as the agent of those entities.

4 In fact, we found, I am just
5 refreshing my recollection, numerous, and just
6 some of them right here -- Video Mercury Films
7 S.A., Video Universal S.A., Venevision
8 Internacional, Telefe, which is Television
9 Federal Internacional S.A., Producciones Patoce
10 S.A., PolyGram Iberica S.A. -- all of those were
11 entities that were represented by EGEDA to us
12 were represented by EGEDA.

13 Within the MPAA's spreadsheet, their
14 Excel spreadsheet that they provided us, it's
15 indicated that those are entities on whose behalf
16 MPAA is making program claims, identifying them
17 as the purported owner, but not identifying EGEDA
18 as the agent but identifying instead Fintage as
19 the agent.

20 Q And EGEDA is the sub-agent?

21 A It presumably would be because there's
22 -- of course, we haven't seen the contract

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1 between Fintage and EGEDA or a contract between
2 Fintage and any of these entities, but given on
3 top of that there are I think 385 circumstances
4 in which a particular program has been claimed by
5 the MPAA and attributed to EGEDA as the owner,
6 and they're not an owner or distributor of
7 programming.

8 Q Let me ask you to take a look at
9 what's been marked as Exhibit 36, and that is a
10 list, it's got the title Claimants Claimed by
11 Fintage House through EGEDA. And did you create
12 this list?

13 A Yes, I did.

14 Q And what did you create it from?

15 A Again, this was taken from the Excel
16 spreadsheet that the MPAA provided to us, and
17 this has distilled down those entities that
18 Fintage House has represented in that list to be
19 the agent of, but for which our own information
20 is that EGEDA was in fact the agent of that
21 entity.

22 Q And is there anything in the record

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1 that -- are there any agreements in the record
2 that make the connection between EGEDA and these
3 entities?

4 A There's no connection between EGEDA
5 and these entities. There's no connection
6 between Fintage and these entities. There's no
7 connection between the MPAA and these entities.

8 MR. BOYDSTON: Thank you, Your Honor.
9 Thank you, Mr. Gal -- Galaz, rather. Your Honor,
10 I have nothing further.

11 JUDGE BARRETT: Mr. Olaniran?

12 MR. BOYDSTON: Oh, Your Honor, I beg
13 your pardon. Very quickly, I wanted to -- I
14 wanted to make a proffer of providing a document
15 like the document Judge Strickler described. I
16 -- in short order, IPG would spread the
17 information that we've been referring to provided
18 by the MPAA and cull it down to just the entities
19 that were testified about here today and provide
20 electronically to the parties and to the Judges,
21 if that is convenient, by Tuesday of next week.

22 And we would ask that it be

1 provisionally marked as Exhibit 127, to be either
2 admitted or not admitted later on by the Judges,
3 and it would provide the MPAA the opportunity, if
4 they wanted to, to contradict Mr. Galaz's
5 statement thereon.

6 JUDGE STRICKLER: Your proffer is that
7 this exhibit that you would create would be
8 nothing other than a memorialization of Mr.
9 Galaz's testimony to that effect today?

10 MR. BOYDSTON: That's correct.

11 MS. PLOVNICK: We've already heard his
12 testimony and we have the whole spreadsheet, so
13 --

14 MR. BOYDSTON: I -- we are making this
15 proffer largely to address any possible concern
16 that might be out there in the ether due to the
17 comments by counsel for SDC.

18 JUDGE STRICKLER: Should we hear from
19 the ether?

20 (Laughter.)

21 JUDGE BARRETT: Mr. Boydston, if you
22 would like to prepare a summary document, you may

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1 do so. We won't number it or mark it or make a
2 ruling on its admissibility. Certainly, if you
3 were to produce such a document and if the other
4 parties do not find fault with it as in
5 inaccuracies, it will be helpful to the Judges
6 and aid in their deliberations, since the Judges
7 don't have the entire spreadsheet, it was a
8 discovery document.

9 MR. OLANIRAN: Your Honor, I would
10 also suggest that I -- well, we just have a
11 fundamental objection to somehow showing up -- a
12 party trying to show up evidence at this point.
13 And I think the whole discussion, ultimately it
14 might be a misunderstanding of what Mr. Galaz --
15 and I intend to ask questions about that, and
16 then hopefully by the time we get through the
17 questions, that will just illuminate what perhaps
18 has been a misunderstanding.

19 JUDGE BARRETT: It would be merely a
20 summary document, an illustrative document, if
21 you will, a demonstrative -- not demonstrative,
22 but illustrative of Mr. Galaz's testimony.

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1 Before it can be admitted or considered for
2 admission, all parties would have an opportunity
3 to review it, you could have it overnight, you
4 can have it over lunch.

5 JUDGE STRICKLER: I might add, in that
6 vein, to the extent you see any discrepancies
7 between Mr. Galaz's testimony and the summary
8 document itself when you do your proposed
9 findings of fact and conclusions of law, you can
10 certainly point out that the summary differs from
11 what was said and make whatever argument you want
12 to make in that regard, because it's our
13 intention as of now to rely on the testimony, not
14 a document that's being created at the eleventh
15 hour simply to be helpful.

16 If it's different, it's not helpful,
17 and it's too late.

18 MR. OLANIRAN: I guess, just for the
19 record, we were worried about the prejudicial
20 effect that such a document might have, even
21 allowing a summary of a document that we believe
22 is fundamentally misunderstood.

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1 The IPG's arguments are
2 well-articulated in their briefs. There is a
3 summary of those arguments in the spreadsheets
4 that Your Honors asked us, asked each party to
5 provide. Those have been provided.

6 Mr. Galaz has testified to what he
7 understands about the relationships between the
8 entities the MPAA represents. I intend to
9 cross-examine him on those issues, and at the end
10 of the day, his answers, my questions, and the
11 same for MPAA, will fit in one of those boxes.

12 So asking again to show up a document
13 that we believe is either flatly wrong or
14 misunderstood could be prejudicial.

15 JUDGE BARRETT: Well, we don't have
16 the document here. It hasn't been produced. It
17 hasn't been offered. And you can argue all of
18 those fine points, Mr. Olaniran, if and when Mr.
19 Boydston shows up with a document that he wants
20 us to consider, and then we can weigh whether we
21 think it is beneficial to us as the finders of
22 fact or whether we think the record is sufficient

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1 without it, all right? Mr. MacLean -- .

2 JUDGE STRICKLER: Is any -- I am
3 sorry.

4 JUDGE BARRETT: Oh, I'm sorry.

5 JUDGE STRICKLER: Is any counsel
6 getting daily copy of the transcripts, or are you
7 awaiting the transcripts on the same time frame
8 we are?

9 MS. PLOVNICK: We just put in a
10 request for daily, but it has -- I don't think
11 that it has taken effect yet, so we will get it
12 soon, but we don't have any of it yet.

13 JUDGE STRICKLER: I ask only because
14 to the extent there may be any difference between
15 the testimony that's supposed to be memorialized
16 in the summary document and the summary document
17 itself, and you have a daily copy, you'd be able
18 to tell us that.

19 MS. PLOVNICK: Yes.

20 JUDGE STRICKLER: So that illuminates,
21 Mr. Olaniran, the prejudicial problem, because we
22 may be prejudiced, but at least it will be

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1 pointed out to us.

2 (Laughter.)

3 JUDGE BARRETT: Mr. MacLean?

4 MR. MACLEAN: Okay, Your Honor, first
5 of all I have no objection to the procedure the
6 Judges have described, and provided of course
7 that we have a chance to respond, and I
8 understand that completely.

9 However, since we're on this topic, we
10 -- I move for an order compelling the production
11 of the summary that was provided to the witnesses
12 whose declarations have been admitted here. That
13 is something that -- that's a document that has
14 not been produced to us and something that we
15 should have the opportunity to examine.

16 MR. BOYDSTON: I'm sorry, I am -- I
17 get your pardon, Mr. MacLean, I don't understand,
18 what document are you referring to?

19 JUDGE STRICKLER: I think this is a
20 tit-for-tat argument. He is shifting gears and
21 he is saying he wants these underlying documents
22 that were referenced in the certifications of the

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1 declarations that the witness testified about
2 from claimants that were not attached as exhibits
3 to those certifications or declarations.

4 MR. MACLEAN: Correct. But where the
5 benefit --

6 (Simultaneous speaking.)

7 MR. MACLEAN: -- said I reviewed this
8 list of conflicting claims and Mr. Galaz, at
9 least to my understanding, testified that the
10 list was an excerpt from a spreadsheet. I want
11 to see that excerpt, and I think I'm entitled to
12 see it.

13 MS. PLOVNICK: Your Honor, that was my
14 continuing objection to paragraph three, is that
15 he took something and showed it to the claimant
16 and had them react in the form of the declaration
17 --

18 JUDGE BARRETT: Okay, this is separate
19 and apart from the summary that we're talking
20 about. I understand your concern about these
21 declarants saying I reviewed the conflicting
22 program claims. We don't know what conflicting

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1 program claims they had reviewed.

2 And as I said before, I think that
3 goes to the weight of the declaration. If you
4 want to give us some three page brief on whether
5 it's appropriate for us to reconsider that, and
6 --

7 MR. MACLEAN: Your Honor, this isn't
8 -- what I am saying now is not an objection to
9 the admission of the declarations. I am asking
10 for -- to compel the production of that document
11 so that we can examine it since the declarants
12 have --

13 MR. BOYDSTON: Your Honor, I think --
14 sorry, I think we've covered this, you've ruled
15 on it. I don't think the fact that I made a
16 proffer to meet one of these requests is an open
17 door for him to start making new motions. I am
18 not even sure what he's asking for, to be honest.

19 JUDGE BARRETT: Okay. I will discuss
20 this with my colleagues, and we will let you
21 know, Mr. Boydston, whether there are some
22 additional documents that you do need to provide.

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1 It's a little late in the proceedings to be
2 asking for us to compel discovery, but I
3 understand what you're getting at, and we'll talk
4 about it, we'll let you know. We'll let you
5 know, more importantly, Mr. Boydston, because you
6 and your clients would be the ones who would have
7 to come up with that.

8 MR. BOYDSTON: Thank you, Your Honor.

9 JUDGE BARRETT: That data.

10 MR. BOYDSTON: Your Honor, I beg your
11 pardon. I didn't move that Exhibit 36 go in.
12 That was the last charge that Mr. Galaz testified
13 about, and we move that Exhibit 36 be admitted.

14 MS. PLOVNICK: As long as it's clear
15 it wasn't created by MPAA, we have no objection
16 to it.

17 MR. MACLEAN: No objection.

18 JUDGE BARRETT: 36 is admitted.

19 (Whereupon, the above-referred to
20 document was received into evidence as IPG
21 Exhibit 36.)

22 MR. BOYDSTON: Thank you, Your Honor.

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1 JUDGE BARRETT: Mr. Olaniran?

2 MR. OLANIRAN: Sure. Good afternoon,
3 Mr. Galaz. My name is Greg Olaniran.

4 THE WITNESS: Good afternoon.

5 MR. OLANIRAN: And I am counsel for
6 MPAA. I just wanted to talk a little bit about
7 the exchanges we've had this afternoon about the
8 spreadsheet.

9 THE WITNESS: Okay.

10 CROSS EXAMINATION

11 BY MR. OLANIRAN:

12 Q And -- excuse me, just to be clear,
13 Exhibit 12 for example and similar exhibits that
14 you pulled from this spreadsheet, this Excel
15 spreadsheet -- that's your, Exhibit 12 for
16 example would be your version of those MPAA
17 titles that are being attributed directly to MPAA
18 representative agents, is that a fair
19 characterization?

20 A The documents that are spreadsheets
21 that I have prepared here were, as I had
22 indicated, derived from the Excel spreadsheet

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1 that the MPAA provided to us, correct, that has
2 culled down certain information that is
3 represented to be what each of these spreadsheets
4 are.

5 Q So there's an Excel spreadsheet that
6 MPAA provided to you -- ?

7 A That was 44,000 entries.

8 Q Just a yes or no will be fine.

9 A Yes.

10 Q Okay. MPAA provided an Excel
11 spreadsheet to you, and you then pulled out
12 specific types of information from that
13 spreadsheet to make some of the exhibits that
14 have been discussed this afternoon.

15 A That's correct.

16 Q And one of those exhibits was Exhibit
17 12, where you -- in my understanding, you
18 attempt to demonstrate MPAA claimed titles that
19 are attributed directly to agents, is that a fair
20 description of it?

21 A That is correct, but even beyond that.
22 They are attributed not just to the agents that

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1 represented -- they are accorded to the purported
2 copyright owners that are represented by agents.

3 JUDGE STRICKLER: I just want to make
4 sure we're talking about the same document,
5 because your question is about Exhibit 12 and
6 you're making reference to titles, but I don't
7 see titles listed on Exhibit 12.

8 JUDGE FEDER: Claimants, I am sorry,
9 claimants.

10 JUDGE STRICKLER: Thank you.

11 JUDGE FEDER: Claimants.

12 JUDGE BARRETT: By -- again, by
13 claimants, you are referring to the owners of the
14 rights, not necessarily the representative agent
15 of the owner? Or are you talking about a joint
16 claimant? Might be an agent.

17 BY MR. OLANIRAN:

18 Q Well let me ask a different question.
19 What is Exhibit 12 referencing? Just to make it
20 easier.

21 A These are entities that have been
22 accorded by the MPAA within its Excel spreadsheet

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1 as the copyright owner to programs claimed by the
2 MPAA, but only limited to those circumstances
3 where that particular owner in one or more years
4 has been represented by an agent.

5 Q I am a little confused about the last
6 part:

7 A Okay. I can give you an example.

8 Q Okay.

9 A Let's say that the MPAA entered into
10 an agreement with company XYZ. And company XYZ
11 has been accorded ownership of program XYZ. That
12 would not appear -- company XYZ would not appear
13 here because the contractual relationship is
14 directly between the MPAA and company XYZ.

15 If, by contrast, that exact same
16 relationship between company XYZ and program XYZ
17 appeared in the MPAA data that indicated that
18 company XYZ was represented through an agent,
19 i.e. there is no contractual or correspondence
20 relationship between the MPAA and company XYZ,
21 company XYZ appears here.

22 And the means by which we identified

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1 whether or not there is an agent or not in one or
2 more years is -- the MPAA data was handled in two
3 different ways. One way was in the column under
4 which they identified copyright owner. In some
5 circumstances, they put in parentheses the name
6 of the agent. And that would be, for instance,
7 First Miracle Productions (Compact).

8 In other circumstances, for other
9 years, they had an additional column that simply
10 said agent.

11 Q Okay. So really, Exhibit 12 is where
12 there's no documented relationship between MPAA
13 and the copyright owner.

14 A That's correct, and that's the
15 heading. But for one or more years, not
16 necessarily for all years.

17 Q I understand. Thanks for the
18 clarification. But you also have other exhibits
19 where agents attributed title ownership also, is
20 that right?

21 A Other examples in which a --

22 Q You have other exhibits in which you

1 identify agents that are being attributed
2 copyright ownership, is that --

3 A Correct. Where a known agent has been
4 -- and that would be an example, for instance,
5 like EGEDA. We know EGEDA is --

6 Q Understood, understood.

7 A -- and their attributed copyright
8 owner.

9 Q So let's get back to the Excel
10 spreadsheet. You know that MPAA filed a written
11 direct statement, Ms. Saunders filed a written
12 direct statement, correct?

13 A Correct.

14 Q Okay. And in the written direct
15 statement, she had a list of -- she identified a
16 list of titles that are claimed by MPAA, right?

17 A Correct.

18 Q And then following the submission of
19 the written direct statement, there was
20 discovery, correct?

21 A Correct.

22 Q And during discovery we produced

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1 certifications of title for the titles that have
2 been claimed in her written direct statement,
3 correct?

4 A That is correct.

5 Q Okay. And then there was discovery
6 disputes which resulted in a motion to compel by
7 IPG, correct?

8 A Correct.

9 Q And it was pursuant to that discovery
10 dispute that the Judges made the July 30 ruling,
11 correct?

12 A That is correct.

13 Q And then when the -- and our response
14 to your motion to compel was that there was no
15 database as you requested with regard to matching
16 owners and titles in the manner that you
17 requested, do you recall that?

18 A That was your response, but not the
19 testimony of Ms. Saunders.

20 Q We are not talking about the testimony
21 of Ms. Saunders. That stands, and let her speak
22 for herself --

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1 A You are right. That was your
2 representation that there was no electronic
3 document that paired the MPAA-represented
4 copyright owner or claimant, even an agent, with
5 a particular program.

6 Q Okay. So in response to the parties'
7 dispute, the Judges issued an order on July 30,
8 correct?

9 A Correct.

10 Q Okay. And that order directed MPAA to
11 produce an electronic database, an electronic
12 spreadsheet, correct?

13 A That identified the claimant paired
14 with the program being claimed.

15 Q That identified the information in the
16 manner that you wanted, essentially.

17 A That's correct.

18 Q Okay. And so in response to that, you
19 received the Excel spreadsheet.

20 A The electronic document, correct.

21 Q Okay. So you now have in your hand at
22 that point Ms. Saunders's written direct

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1 testimony listing the claims that are being made
2 by MPAA. You also have the hard copy of the
3 certifications, correct?

4 A The -- correct.

5 Q Okay. And now you have the Excel
6 spreadsheet.

7 A The Excel spreadsheet that ties those
8 two together, correct.

9 Q Well you have an Excel spreadsheet
10 that was prepared by Ms. Saunders's lawyer,
11 correct?

12 A Correct.

13 Q Okay. And you also get a digitized
14 copy of the appendices to Ms. Saunders's
15 testimony. And I use the word digitized to make
16 a distinction between electronic and -- digitized
17 hard copies which you can search, you can
18 certainly search, versus electronic spreadsheet
19 derived from a software such as Excel.

20 A Actually, I am not sure about that
21 last part. I don't recall whether or not we did
22 or not, but I do want to clarify one thing,

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1 because the Excel spreadsheet that you're
2 referring to --

3 Q Yes.

4 A -- I think you may have referred to it
5 as somehow digitizing or putting in electronic
6 form the certifications, and that is not
7 completely clear, and that's why we were
8 referring to how it's not stricken, so if you
9 have the certification --

10 Q Let's look at Exhibit 333.

11 A 333. Okay.

12 Q Now the statement you just made about
13 a reference to certifications, do you see that in
14 here? I just want to make sure.

15 A The reference to certifications that
16 I just made?

17 Q Yes.

18 A I am somewhat at a loss. Are you --

19 Q I am sorry. I thought you made a
20 reference to something we represented to you
21 about certifications.

22 A Right. Here, I think there was a

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1 representation -- my understanding from Ms.
2 Plovnick is she was saying that the Excel
3 spreadsheet was a representation or digitization,
4 some word to that effect, of what was in the
5 certifications, and that's what prompted the
6 Judges to say well, does it show, for instance,
7 where there has been something stricken?

8 That's not it. It's nothing of that
9 sort. There's --

10 Q So but, let me just direct your
11 attention to the first page of the letter.

12 A Okay.

13 Q And the second paragraph.

14 A All right.

15 Q And one two three, the fourth line
16 from the bottom of the second paragraph, the
17 sentence that starts with "In addition," do you
18 see that?

19 A Yes.

20 Q And it says, "In addition, MPAA is
21 producing electronic copies of Appendices A and B
22 to Jane Saunders's written testimony in this

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1 proceeding.

2 A Okay.

3 Q Right? So you have Ms. Saunders's
4 testimony, and you have the certifications, and
5 --

6 A The hard copies of the certifications?

7 Q The hard copies of the certifications,
8 correct.

9 A Okay, 1,000 pages, okay, all right --

10 Q And then you have this created
11 electronic sheet that didn't exist before the
12 Judges' orders.

13 A Well, I think that's at issue,
14 actually.

15 Q Okay. Now in compiling all of the
16 exhibits that relied on the Excel spreadsheet,
17 for example with regard to the titles that the
18 MPAA is claiming, did you look at the
19 certifications?

20 A I did not -- and just to put this in
21 context, the certifications are, if I recall,
22 you've got some in evidence --

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1 Q It's a yes or no question, Mr. Galaz.

2 A No.

3 Q Thank you. In preparing exhibits that
4 you derived from the Excel spreadsheet dealing
5 with MPAA's titles, did you look at Ms.
6 Saunders's written direct testimony, Appendix B
7 for Satellite and Satellite and Cable Testimony?

8 A I presumed it was an accurate
9 representation of it, so no, I didn't make a
10 comparison between the two.

11 JUDGE STRICKLER: Did you say you
12 presumed it was an accurate or inaccurate?

13 THE WITNESS: An accurate --

14 JUDGE STRICKLER: An accurate --

15 THE WITNESS: That the same titles
16 that appear in one are the same titles that
17 appear in the other.

18 JUDGE STRICKLER: Thank you.

19 BY MR. OLANIRAN:

20 Q So you didn't rely on certifications
21 and you didn't rely on her written direct
22 statement.

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1 A I relied on the -- to create the
2 documents that I have appended as exhibits and
3 have been introduced here, I relied exclusively
4 on the MPAA-produced Excel spreadsheet that ties
5 the claimants with their claimed programs.

6 Q Fair enough. So if in fact there was
7 a discrepancy, an addition that a hard copy
8 certification would have provided for example
9 that didn't show up on the Excel spreadsheet, you
10 would not have captured that?

11 A If there was a discrepancy, which I
12 presume there would not be, then -- then, I am
13 sorry, your question is if I had checked an
14 electronic version of Appendix B to Ms.
15 Saunders's testimony, whether I would have caught
16 it? I would have caught it if there was a
17 discrepancy. I would not have thought there
18 would have been a discrepancy. One was supposed
19 to be representative of the other.

20 Q Well, that's your understanding.
21 Let's just be clear about that. Your
22 understanding is that the Excel spreadsheet is

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1 supposed to be representative of the
2 certifications and Appendix B, for example, in
3 Ms. Saunders's testimony.

4 A Well, I --

5 Q Yes or no first, before you give an
6 answer to that question --

7 A Well in a yes or no context, I can't
8 answer your question.

9 Q Okay. We'll move on, then.

10 Now one of IPG's claims is that MPAA
11 failed to substantiate its authority to
12 represent, I think you had 582 claimants, is that
13 correct?

14 A For one or more years, correct.

15 Q For one or more years. So -- and the
16 copyright owners that you're talking about -- the
17 basis for this is that you don't see a documented
18 relationship between the copyright owner and
19 MPAA, is that correct?

20 A Not entirely.

21 Q Okay, what's not correct about that?

22 A Well not only is there not a document

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1 that establishes communication or contractual
2 relationships between the purported copyright
3 owner and the MPAA, but also the purported
4 copyright owner and the purported agent. There's
5 no documents for the particular years that we're
6 dealing with that demonstrates that that party is
7 making claim for programs for that year or has
8 authorized anybody to represent them for that
9 particular year. There's literally nothing.

10 Q No relationship, no documented
11 relationship between the copyright owner and the
12 agent or the copyright owner and MPAA, is that a
13 fair --

14 A That's correct.

15 Q Thank you. And did you raise this
16 issue before in the last proceeding, in the
17 '00-'03 proceeding?

18 A We raised it in --

19 Q Just a yes or no.

20 A Yes.

21 Q Thank you. And are you aware that the
22 Judges ruled on this issue before, that there's

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1 no requirement to produce every single agreement
2 that an agent has with a copyright owner? Yes or
3 no.

4 A Well, again, in that narrow context,
5 I'd say no.

6 Q You're not aware that the Judges ruled
7 as such?

8 A That was not my understanding of the
9 ruling --

10 Q Okay, let's move on. There is no
11 point in debating the law with you.

12 A I am not debating.

13 Q IPG also, has also claimed that the
14 Foreign Collection Societies are falsely
15 attributed copyright ownership, correct?

16 A Correct.

17 Q And you testified to some of that
18 earlier today. And you identified
19 Australian-based Screenrights and also EGEDA, and
20 I wish I could actually pronounce the full name
21 of EGEDA, but I am a little short on Spanish.
22 But it's E-G-E-D-A, I think, that's the acronym

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1 for EGEDA.

2 And with regard to Screenrights, what
3 evidence did you rely on to conclude that
4 Screenrights was presented to serve as the
5 copyright owner?

6 A I am sorry, what evidence did I rely
7 on for? I didn't hear the last --

8 Q Concluding that Screenrights has been
9 presented as a copyright owner.

10 A That they are identified as the
11 purported copyright owner?

12 Q Yes.

13 A It appears actually in two documents.
14 It appears in the electronic Excel spreadsheet
15 that the MPAA has produced, pursuant to the July
16 30 order, and I have one of our admitted exhibits
17 as one that identifies for which programs
18 Screenrights has been identified as the owner of
19 a particular program.

20 Q And that identification --

21 A I didn't finish, I am sorry.

22 Q That's okay.

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1 A And then the second document is
2 actually the certifications of that AVCS
3 Screenrights has executed, some of which are in
4 your exhibit book.

5 Q The actual certifications?

6 A. The actual certifications have an
7 attachment that at the top says who the owner is,
8 and then it identifies Screenrights.

9 Q So with regard to Screenrights, you
10 wouldn't be on the Excel spreadsheet and looking
11 at certifications?

12 A No, I didn't. But I have since
13 because that was included in your exhibits, and I
14 witnessed it there.

15 Q Okay. Now let's turn to Exhibit 338.

16 A Okay.

17 Q Are you there?

18 A Yes.

19 Q Okay. And Exhibit 338 is the
20 Certification of Entitlement that was completed
21 by Screenrights. And in that exhibit, do you
22 have the certification for 2007, 2008, and 2009?

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1 A Okay.

2 Q Okay. And on each one of the
3 certifications, there are three ways in which a
4 claimant could identify its status. Do you see
5 that?

6 A Are you talking just on the first
7 page?

8 Q On the first page, yes.

9 A Or the second page as well?

10 MR. BOYDSTON: This one is restricted.

11 JUDGE BARRETT: This is restricted and
12 it's also not admitted yet into evidence, so --

13 MR. OLANIRAN: It is admitted.

14 JUDGE BARRETT: Oh, I am sorry, my
15 notes are defective. If you have not signed a
16 confidentiality agreement, would you please wait
17 outside? If I remember I'll invite you back in
18 before the day is over. And feel free to put
19 that closed session sign on the other side of the
20 door.

21 Thank you. Okay, go ahead, Mr.
22 Olaniran.

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1 BY MR. OLANIRAN:

2 Q And I was asking that on Exhibit 338,
3 on the very first page, the Certificate of
4 Entitlement for 2007 that Screenrights executed
5 -- you have three boxes in which you could check
6 the status, correct?

7 A Correct.

8 Q One of the boxes that you could check
9 is that owner other than corporation of
10 partnership, right?

11 A Correct.

12 Q And you could check as an agent of
13 owner other than corporation of partnership,
14 correct?

15 A Correct.

16 Q And you could check as an officer or
17 partner.

18 A Officer -- well, clarification.
19 Officer or partner of the legal entity identified
20 as the owner or authorized agent of the owner of
21 the programs on the print-out.

22 Q Okay --

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1 A So it seems somewhat ambiguous as to
2 whether you're -- you're purporting to be an
3 officer or partner, but it's not clear whether
4 you're an officer or partner of an agent or the
5 underlying owner.

6 Q Move to strike, Your Honor, that's not
7 a response that --

8 MR. BOYDSTON: Your Honor, he is only
9 reciting what the thing says --

10 MR. OLANIRAN: No, he is actually
11 trying to interpret a form that he is not an
12 author.

13 JUDGE BARRETT: Granted.

14 BY MR. OLANIRAN:

15 Q So on -- so with respect to the
16 Certification of Entitlement for 2007,
17 Screenrights checks as an agent of owner, doesn't
18 it?

19 A It checks agent of owner.

20 Q Okay, thank you. And why don't you
21 look at the certifications for 2008?

22 A They all, I'll acknowledge, 2007,

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1 2008, and 2009, the instances you've provided
2 here, in each circumstance they've checked agent,
3 but then the next --

4 Q That's not what I asked.

5 A -- the next exhibits contradict that.

6 Q I am not asking you about the next
7 exhibits.

8 A I am not talking about the next
9 exhibit, I am talking about the attachment to the
10 face page on the exhibit.

11 JUDGE BARRETT: Mr. Galaz, wait for
12 the question, okay?

13 MR. OLANIRAN: Thank you, Your Honor.

14 BY MR. OLANIRAN:

15 Q You also testified that EGEDA
16 presented itself as a copyright owner, correct?

17 A I don't think I said EGEDA presented
18 itself as a copyright owner. What I think I said
19 is that the MPAA is attributing them as the
20 copyright owner.

21 Q MPAA is attributing copyright
22 ownership to EGEDA --

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1 A Correct.

2 Q -- so are you, are you -- okay.

3 A I have no idea whether EGEDA is
4 because there is no correspondence between EGEDA
5 and any entity that has been produced to us.

6 Q So and your basis, again, is the Excel
7 spreadsheet, is that right?

8 A The Excel spreadsheet that the MPAA
9 produced that combines the identified copyright
10 owner and agent, if there is an agent, with a
11 particular program. There are 385 circumstances
12 in which EGEDA is identified as the owner without
13 agent.

14 Q Understood. Now, it would save a lot
15 of time if you didn't keep explaining the Excel
16 spreadsheet over and over again. I think we get
17 the idea.

18 Now other than the Excel spreadsheet,
19 did you review any other discovery with regard to
20 the status of EGEDA as a copyright owner?

21 A There was nothing offered by EGEDA
22 that was produced.

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1 Q Let me direct your attention to --

2 A At least that I recall.

3 Q -- Exhibit 341.

4 A Okay.

5 Q And Exhibit 341, do you recognize that
6 document?

7 A It appears to be several documents.

8 JUDGE STRICKLER: Which exhibit,
9 counsel?

10 MR. OLANIRAN: 341, Your Honor.
11 Pre-marked as 341, it hasn't been admitted yet.

12 BY MR. OLANIRAN:

13 Q Have you had a chance to review it?

14 A I am just glancing over it until you
15 direct me to something in particular.

16 Q I asked you if you recognized the
17 document.

18 A And I was saying it appears to be
19 multiple documents.

20 Q There's multiple documents of the same
21 kind, if you will.

22 A They -- there's the certification

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1 signed by Fintage on behalf of Bell-Phillip for
2 2001, 2002 -- well I mean, I don't know if you
3 want me to go through all of them, but they are
4 various certifications, they are a like type of
5 document.

6 Q Okay. And you would have received
7 these in discovery. You received these in
8 discovery, did you not?

9 A I believe so, as indicated by the
10 Bates stamp. That would indicate that they were
11 received, this one in Satellite, if it's preceded
12 by an S, Satellite, if it's preceded by a C, it's
13 Cable.

14 Q And move to admit Exhibit 341, Your
15 Honor.

16 MR. BOYDSTON: Well, Your Honor, I am
17 not sure that this witness is able to
18 authenticate this, so I would object on that
19 ground.

20 There is another ground I'd like to
21 object to that's a bit more weighty and applies
22 to a few other exhibits as well. And this is, my

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1 objection is as follows: it goes back to the
2 testimony of Jane Saunders, and specifically with
3 regard to, like looking at 341, the second page
4 is a listing of just two programs. The fourth
5 page is a listing of programs, and each of these
6 have the certification followed by a listing of
7 the number of programs.

8 And my question to Ms. Saunders was,
9 you know, where do these come up? Where do these
10 come from, these lists? There must have been
11 some sort of a way to mesh together the owners of
12 copyright and particular programs.

13 And she said, well, at the MPAA all we
14 have is paper to do this, but at our third-party
15 vendor, they had a computer database they used to
16 generate these sheets that would then be, then,
17 you know, stuck with the certifications and sent
18 out.

19 And I said, well, okay, so your unit
20 had them, your vendor had it --

21 JUDGE BARRETT: Could you give us a
22 legal basis for the objection, Mr. Boydston,

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1 instead of a narrative?

2 MR. BOYDSTON: I am sorry, Your Honor,
3 it was just I had to describe what I was talking
4 about. The legal basis is they never produced
5 the electronic database that generated the list
6 of programs.

7 They claim that no such electronic
8 database existed, and yet when I questioned Ms.
9 Saunders, she indicated that the third-party
10 vendor did have such database, the Whitt entity,
11 and that they provided that hard drive to
12 counsel.

13 So counsel had the hard drive from Mr.
14 Whitt's company that generated these lists even
15 though they said in discovery that they didn't
16 have such a thing, that they, in discovery, they
17 insisted no, we have no such thing. And in fact
18 it did exist, with the third-party vendor who, in
19 2010, turned it over to counsel.

20 And I apologize because just, this has
21 to do with testimony of several days ago.

22 MR. OLANIRAN: Your Honor, that's a

1 complete mischaracterization of Ms. Saunders's
2 testimony. I distinctly recall Ms. Saunders
3 explaining --

4 MR. BOYDSTON: I beg your pardon, can
5 you speak up?

6 MR. OLANIRAN: I distinctly recall Ms.
7 Saunders explaining about the piles of paper that
8 Ms. Kessler had to deal with when it was time to
9 complete the certification projects.

10 MR. BOYDSTON: Precisely. And what
11 Ms. Saunders said was that the program lists that
12 are behind each of these certifications were
13 delivered to Ms. Kessler from the third-party
14 vendor, but that the third-party vendor came up
15 with them by electronic means and then handed
16 them over to the MPAA.

17 And then she continued to respond to
18 my questions. I said, well what happened to that
19 database? She said, a third-party vendor stopped
20 doing business and gave its hard drive to counsel
21 for the MPAA. So, when we asked in discovery,
22 when we demanded that, the MPAA responded that it

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1 didn't have it. Well, clearly it had it in its
2 control in that the exact hard drive that created
3 those lists had been provided to counsel for the
4 MPAA.

5 MR. OLANIRAN: Your Honor, I find this
6 quite interesting given that IPG itself has
7 actually moved in one or maybe two of very, very
8 similar exhibits, which are certifications
9 supported by these same sheets that he is now
10 campaigning to have kept out of evidence.

11 MR. BOYDSTON: Your Honor, no, I don't
12 think so. There was no database demanded of us
13 that we said didn't exist that in fact was in
14 control of counsel or of my client.

15 MR. OLANIRAN: No, I am saying that
16 you have actually moved in -- I believe you have
17 moved in one of the --

18 JUDGE BARRETT: No cross talk, please.
19 Mr. Olaniran, address your comments to the bench.

20 MR. OLANIRAN: Sorry about that, Your
21 Honor.

22 What I was saying is that I think --

1 I don't recall the exhibit number, but I believe
2 one of the certifications was actually moved in
3 while IPG was presenting.

4 MR. BOYDSTON: Yes, that's true. 338
5 was moved in before we got to that point in Ms.
6 Saunders's declaration, or testimony. I didn't
7 raise any objection to that there, but that
8 doesn't mean I can't raise one here.

9 JUDGE BARRETT: Well 338 is in, so --

10 MR. BOYDSTON: Right, I -- no debate
11 there, I am not objecting to that. I am
12 objecting to this one.

13 MR. OLANIRAN: It is all the same type
14 of evidence, Your Honor. It's --

15 MR. BOYDSTON: Certifications --

16 MR. OLANIRAN: Certifications, let me
17 finish. Certifications on the front page, and
18 the computer print out is attached to each
19 certification form.

20 MR. BOYDSTON: There is no question it
21 is the same type of document. I didn't object to
22 the other. That doesn't preclude me from

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1 objecting to this one or others.

2 JUDGE STRICKLER: What's the legal
3 objection?

4 MR. BOYDSTON: The legal objection is
5 the second page's list of the titles were derived
6 from an electronic database that we demanded in
7 discovery, the MPAA said it didn't exist, Ms.
8 Saunders's testimony indicated it did exist with
9 a third-party vendor, and in 2010, if my memory
10 served, the vendor gave it to counsel for the
11 MPAA.

12 Thereafter, we demanded it in
13 discovery and it wasn't produced, and therefore I
14 am objecting to this document on the grounds that
15 the program that produced -- the program list was
16 not produced, even though it was within the
17 control of the MPAA and it was requested.

18 JUDGE STRICKLER: How have you come to
19 the conclusion, maybe I am missing it, that
20 Exhibit 341 was derived from the document from
21 the spreadsheet that you didn't receive?

22 MR. BOYDSTON: Because when I asked

1 Ms. Saunders where those lists came from, she
2 said they were delivered to the MPAA by the
3 third-party vendor, the Whitt entity, and that
4 the Whitt entity created electronically with a
5 program that took the big giant lists of all the
6 programs and the big giant lists of all the
7 program owners and connected the two.

8 And then she said they printed out a
9 big stack and gave it to Marsha Kessler to match
10 up with the certifications. And then I said well
11 gee, whatever happened to that electronic
12 database? And she said well, Whitt went out of
13 business and turned over the hard drive to
14 counsel, meaning counsel for the MPAA.

15 Thereafter, during these proceedings,
16 we demanded such a document, or I should say
17 database. We were told it didn't exist, and then
18 that was contradicted by Ms. Saunders's
19 testimony.

20 JUDGE STRICKLER: So you're saying you
21 would have had the same objection to 338 had you
22 had other information or thought of it

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1 previously?

2 MR. BOYDSTON: Perhaps. And maybe I
3 would have let 338 come in if I wanted to see
4 certain information in 338. But at the time 338
5 came out, I was asking a question of Ms.
6 Saunders, and I wanted to continue asking my
7 question, and she hadn't provided that
8 information at that time.

9 JUDGE STRICKLER: And you're offering
10 this into evidence now based on what foundation,
11 Mr. Olaniran?

12 MR. OLANIRAN: Off the basis that we
13 produced it to them in discovery.

14 JUDGE BARRETT: In hard copy?

15 MR. OLANIRAN: In hard copy, yes. And
16 Your Honor, I wish I had the transcript of Ms.
17 Saunders's testimony, so I am at a disadvantage.
18 What we've heard is Mr. Boydston's version of
19 what Ms. Saunders testified to, and --

20 JUDGE BARRETT: And you would
21 controvert that by saying what?

22 MR. OLANIRAN: By saying that is not

1 Ms. Saunders's testimony.

2 JUDGE BARRETT: Can you paraphrase
3 what you think Ms. Saunders's testimony is?

4 MR. OLANIRAN: I said earlier to Ms.
5 Saunders that she had a stack of paper, and what
6 I suspect this is -- what I am almost certain
7 this is, actually, I asked Ms. Saunders again,
8 are the copies of the stacks of paper that Ms.
9 Kessler used to compile the certifications.

10 JUDGE BARRETT: Okay -- yeah. We
11 still have the issue of Mr. Whitt's hard drive
12 being -- when he retired, he turned over his hard
13 drive except for the one he later discovered in
14 his basement, which we've learned in a companion
15 proceeding. Did he turn that over to MPAA? Did
16 he turn that over to your firm? Does anybody
17 know what he did with his hard drive when he
18 retired?

19 MR. OLANIRAN: I don't recall Ms.
20 Saunders's testimony on that particular --
21 exactly what the --

22 JUDGE BARRETT: MPAA got it, that's

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1 what I recall, not that counsel got it. But be
2 that as it may.

3 MR. OLANIRAN: It was something along
4 those lines, and I forget what she said about the
5 availability of it, something like that.

6 JUDGE STRICKLER: The issue at hand is
7 whether or not to admit 341.

8 MR. OLANIRAN: Correct.

9 JUDGE STRICKLER: And the question --
10 there is an objection based on a lack of
11 foundation, you didn't have sufficient documents
12 that were used to create 341, correct, Mr.
13 Boydston?

14 MR. BOYDSTON: Correct.

15 JUDGE STRICKLER: And the witness who
16 can provide that foundation is sitting right
17 here, Ms. Saunders, in the courtroom, right now.

18 MR. BOYDSTON: Right.

19 JUDGE BARRETT: Okay. So we'd like to
20 hear from Ms. Saunders to figure out --

21 MS. SAUNDERS: Oh thank heavens,
22 because this is killing me.

1 (Laughter.)

2 JUDGE BARRETT: Ms. Saunders, you
3 remain under oath.

4 MS. SAUNDERS: Yes, absolutely.

5 JUDGE BARRETT: And you must not swear
6 any.

7 MS. SAUNDERS: Unless thank heavens
8 counts as a swear, I will try. Who is
9 questioning me?

10 JUDGE BARRETT: Mr. Olaniran is --

11 MS. SAUNDERS: Okay.

12 JUDGE BARRETT: But Mr. Boydston may
13 voir dire --

14 MS. SAUNDERS: Absolutely.

15 JUDGE BARRETT: -- depending on where
16 we go with this. Mr. Olaniran?

17 DIRECT EXAMINATION

18 BY MR. OLANIRAN:

19 Q Ms. Saunders, are you looking at
20 Exhibit 341?

21 A Yes, I am.

22 Q And what is that exhibit?

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1 A It is a certification for -- actually,
2 it is a series of certifications executed by a
3 Fintage, by an officer or the managing director
4 of Fintage, in respect of claims made for various
5 satellite and cable retransmission royalties over
6 the period of 2001, 2002 -- hold on, it's going
7 to take me a while -- I am guessing up through,
8 let's see, 2004, 2007, I am going to guess it's
9 through -- unless you want me to go through every
10 single one, which is going to take me a minute
11 because unhelpfully, there's no colored paper
12 between these.

13 Q Okay. That's --

14 A It goes up through -- it says 2004 to
15 2009, so --

16 Q Okay, and it's not just one, there's
17 multiple entities on whose behalf Fintage
18 executed the --

19 A Yes, yes, that is correct, yes, that
20 is correct.

21 Q And how was the document created?

22 A I am sorry?

1 Q How was the document created?

2 A Created?

3 Q Yes.

4 A So as I testified previously, Mr.
5 Whitt gave, produced to Ms. Kessler hard copies
6 of the list of titles which -- and the claimants
7 associated with those titles, to which Mr.
8 Kessler would append, or appended, a cover
9 Certification of Entitlement form for the
10 claimant to execute confirming that the capacity
11 in which they make the claim, that they filed a
12 valid claim for the royalties, and confirming
13 through either -- through notations on the titles
14 list in each year which titles they want to -- or
15 they could claim cable retransmission or
16 satellite retransmission royalties.

17 I think I got the grammar all messed
18 up there. But the years for which and the titles
19 which they could claim in each of the royalty
20 years.

21 Q You have other certifications in the
22 record, don't you?

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1 A Yes, yes we do. I think we have a
2 few. I think we have certifications for many of
3 the claimants that IPG has challenged.

4 Q Would you look at 337, the exhibit
5 pre-marked as 337?

6 A Yes, yes. This is a certification
7 signed by Allied Communications by C.B. McKay, as
8 a Regional CEO for Allied Communications. And do
9 you need me to tell you for what years? It
10 appears to be satellite royalties in 2005 with a
11 list of titles appended.

12 Q Also, would you look at Exhibit 339
13 please?

14 A Yes. Also a certification, executed
15 on behalf of CBS Broadcasting on behalf of King
16 World Productions, signed by the Vice President
17 and Assistant Secretary Martin Messinger --

18 Q Okay --

19 A -- for, sorry, for satellite royalties
20 in calendar year 2000, with a fairly lengthy
21 title list. Oh, sorry, with a title list, and
22 then a satellite retransmission royalties

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1 certification for calendar year 2000. Both are
2 certified to as officer or partner of the entity
3 identified as the owner or authorized agent.

4 MR. BOYDSTON: Your Honor, this is
5 covering old ground.

6 JUDGE BARRETT: May I just jump in
7 here and say something to cut to the chase. Mr.
8 Whitt created these papers, gave them to Ms.
9 Kessler. Ms. Kessler ran with the ball.

10 THE WITNESS: Yes.

11 JUDGE BARRETT: When Mr. Whitt
12 retired, he took the hard drive out of his
13 computer. Do you have any knowledge what he did
14 with it at that point?

15 THE WITNESS: I do.

16 JUDGE BARRETT: And what is that?

17 THE WITNESS: He gave the hard drive
18 to MPAA, and I gave that hard drive to counsel.
19 I think this is the part of my testimony where I
20 said I was not the cyber-judge. I took the hard
21 drive and I gave it to my counsel, and I
22 instructed my counsel to extract from it whatever

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1 they could.

2 I specifically did not say that Mr.
3 Whitt had a database. I think I specifically
4 said that I did not know how Mr. Whitt conducted
5 his operations or how he compiled his data. I
6 did say that Mr. Whitt did rely on broadcast data
7 that was acquired in order to generate those
8 lists. That was the extent, I believe, of how I
9 characterized Mr. Whitt's operation.

10 JUDGE BARRETT: Mr. Olaniran, could
11 you make a representation as an officer of the
12 court that your office made an effort to extract
13 data from Mr. Whitt's hard drive?

14 MR. OLANIRAN: Yes we did, Your Honor.

15 JUDGE BARRETT: Okay. And what did
16 you do with the data you were able -- if you were
17 able to extract any, what did you do with it, or
18 how did you configure it, and where is that base
19 of knowledge at this point?

20 MR. OLANIRAN: I am not the
21 cyber-lawyer. If Ms. Plovnick --

22 JUDGE BARRETT: Ms. Plovnick --

1 MR. OLANIRAN: Yes.

2 MS. PLOVNICK: We examined the hard
3 drive, and we found various -- you know, we went
4 though the hard drive, and we extracted what we
5 could, and we used as much of it as we could to
6 form the Excel spreadsheet that we produced.

7 We tried to be as -- you know, to cull
8 what we could to do that. And so that is the
9 electronic record that we were able to create
10 based on what was not in a database form.

11 JUDGE STRICKLER: What form was it in?

12 MS. PLOVNICK: It was multiple, all
13 over the place, very not very well-maintained
14 condition files, I assess that this way. I am
15 also not a cyber person, but it was a collection
16 of bits --

17 JUDGE BARRETT: Are you making a
18 representation that your law firm extracted
19 everything that was extractable from the hard
20 drive and incorporated everything into the
21 spreadsheet that you created in response to the
22 Judges' discovery order?

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1 MS. PLOVNICK: Yes, Your Honor.

2 MR. OLANIRAN: I would also add -- and
3 Mr. Whitt has some damage to some of the drives,
4 and I think that issue in fact came up. In one
5 of the proceedings, I think perhaps they were
6 describing a 99 percent damage --

7 MS. PLOVNICK: I think that was the
8 one in his basement.

9 MR. BOYDSTON: Your Honor, I think it
10 ought to be taken into consideration that Mr.
11 Olaniran has said he is not the cyber-lawyer, so
12 now all of a sudden he knows what the damage is.
13 I don't know how that came up.

14 JUDGE BARRETT: Well we were just here
15 15 minutes ago in the 1999 proceeding, and we had
16 extensive testimony from Mr. Whitt. And I don't
17 think we need to repeat that here, but to the
18 extent we need to know what Mr. Whitt's processes
19 and history are or were, we can incorporate the
20 transcript of the 1999 hearings -- we all know
21 Mr. Whitt had a company, he did his data
22 manipulation, he retired, he turned over what he

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1 could, he found one in his basement on the eve of
2 our determination in the '99 proceeding, you
3 know, we are familiar with that, okay?

4 So all I need to establish today, or
5 all we need to establish, is whether there is any
6 data anywhere in any form, I mean useable form,
7 that is not included in the spreadsheet that
8 MPAA's counsel produced in response to the
9 Judges' July order. And I understand you -- I
10 will let you answer that, is there, to your
11 knowledge?

12 MS. PLOVNICK: Not to my knowledge.

13 JUDGE BARRETT: Okay.

14 MR. OLANIRAN: I am very confident,
15 Your Honor, that there isn't.

16 JUDGE BARRETT: Okay.

17 MR. OLANIRAN: And if I could add one
18 final point, I know -- and this is why it was
19 absolutely critical that for Appendices A and B
20 for Ms. Saunders's testimony, you could not rely
21 on anything else but the list of claimants
22 supported by the representation record and the

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1 list of titles supported by the certification.

2 JUDGE STRICKLER: As opposed to the
3 Excel spreadsheet.

4 MR. OLANIRAN: As opposed -- well.

5 JUDGE STRICKLER: Among other things,
6 as opposed to the Excel spreadsheet --

7 MR. OLANIRAN: Again, if you read our
8 briefs, we were trying to explain as much as we
9 can. This is exactly the problem that we were
10 trying to articulate in our briefs because our
11 interpretation of the discovery rule is to
12 provide documents that underlie the testimony.
13 The document that underlies Ms. Saunders's
14 testimony with regard to the titles that were
15 claimed are the certifications which we provided,
16 and also, the list appended to her testimony
17 which was digitized, I believe, in searchable
18 form, for IPG to use.

19 JUDGE BARRETT: Mr. MacLean, you were
20 on your feet.

21 MR. MACLEAN: Oh. Your Honor, I
22 decided not to interrupt. However, since you

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1 have called on me, Your Honor -- and I am
2 actually a little bit embarrassed to raise this
3 because I know how it might sound -- however, Mr.
4 Galaz is at this very moment a witness on the
5 stand even though he is not sitting in the
6 witness chair right now.

7 Ms. Saunders is testifying only as to,
8 as I understand, the foundation with respect to a
9 document that was offered in Mr. Galaz's
10 testimony. I would request the Judges to
11 admonish and direct Mr. Galaz not to pass notes
12 and whisper with his counsel, particularly
13 regarding his testimony while he is a witness on
14 the stand.

15 MR. BOYDSTON: Your Honor, there has
16 been no communication between us about his
17 testimony. There has been communication with us
18 about her testimony, and I think that's
19 permissible.

20 JUDGE BARRETT: Thank you, it is.
21 Thank you, Mr. MacLean.

22 Mr. Boydston, do you want to ask any

1 questions of Ms. Saunders before your client gets
2 back on the stand?

3 MR. BOYDSTON: I would. Can I just do
4 it from here?

5 JUDGE BARRETT: As long as the court
6 reporter can hear you.

7 MR. BOYDSTON: Okay.

8 CROSS EXAMINATION

9 BY MR. BOYDSTON:

10 Q Now Ms. Saunders, and correct me if
11 I'm wrong, I am only going off memory, I don't
12 have a transcript, but my recollection was that
13 this all came up originally in the context of me
14 asking you about Appendix A and B to your
15 declaration, one of which listed programs and one
16 of which listed program owners. Do you --

17 A Claimants, claimants.

18 Q -- recall -- thank you, claimants.
19 Thank you, claimants, yes. Do you recall that --
20 ?

21 Q I do.

22 A And my question was initially

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1 something along the lines of, you know, how did
2 you connect the two? From this big list of
3 programs, how do you connect which programs are
4 owned by which claimant? And you said that Mr.
5 Whitt did that, the third-party vendor. Is that
6 correct?

7 A That's correct.

8 Q And I said, okay. And do you know how
9 he did it? And you said something to the effect
10 of I don't know, but he took those things and he
11 used some sort of computer programs or something
12 like that to do it and came up with lists and
13 then returned them to us in a paper format, at
14 which point Marsha Kessler and then her successor
15 put them together with certifications. Is that
16 accurate?

17 A I don't know if the actual words you
18 just used are accurate, but the concept is
19 absolutely spot-on. I do not know what was in
20 Mr. Whitt's machines, his processes. I do not
21 know if he created a database. I do not know how
22 he used the information that came to him. All I

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1 know is what the MPAA got and distributed to his
2 claimants, or I should say, I know that Ms.
3 Kessler distributed it to her claimants.

4 Q What were -- where did the appendices
5 come from?

6 A The appendices were -- they were
7 generated, as I understand it, by Mr. Whitt in
8 respect of each claimant.

9 Q Okay. Just to make clear, when I say
10 appendices, I mean the Appendix A and Appendix B
11 --

12 A Oh, I am so sorry. The list of our
13 claimants and of our titles?

14 Q Yes, right.

15 A I -- those lists were prepared by
16 counsel in response to, or based on the
17 certification reports that were returned to MPAA
18 by our claimants.

19 Q So they would get the certification
20 reports in and they'd just make a big list?

21 A Yes, exactly. It was really arduous.

22 Q Then you testified -- I asked you, I

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1 think, you know whatever -- actually, I don't
2 remember --

3 A And I should also add it was really
4 expensive.

5 Q I bet it was. You then -- my
6 recollection is that you then testified that when
7 Mr. Whitt retired, he turned over his hard drive
8 to you, and then you turned it over to your
9 counsel, correct?

10 A He turned it over, actually, to then,
11 our then-Director for Retransmission Royalty,
12 Sandra Pope, who at my instruction turned it over
13 -- actually, I believe that my instruction was
14 that my lawyers send a courier and collect from
15 Ms. Pope's office literally every scrap of every
16 thing that she could find or lay her hands on
17 that pertained to these proceedings and these
18 royalty years, including Mr. Whitt's hard drive.

19 Q The Appendix A and B to your
20 declaration, you remember my talking about the
21 programs --

22 A The lists and the claimants and the

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1 parties, yes?

2 Q Did you communicate with counsel as to
3 how those were created, or do you know how those
4 were created by counsel? Did they type up the
5 1,000 pages, or do you know?

6 A I don't know.

7 Q Now given that the certifications and
8 the program lists attached to the certifications
9 were created by Mr. Whitt, to your knowledge,
10 from the -- and using his devices, whatever they
11 were, and given that the chart that was given to
12 IPG pursuant to the order by the court was
13 created by the same source, according to your
14 counsel, wouldn't you expect that they would line
15 up?

16 A No. I believe, and I had lengthy
17 conversations with my lawyers during which I
18 almost tore my hair out because this process took
19 forever and cost thousands and thousands of
20 dollars --

21 Q And which one was this extraction?

22 A Extracting the lists of claimants and

1 owners by royalty year to cover all the years at
2 issue in this proceeding, and it was beyond
3 frustrating that we didn't have a single, to use
4 your word, database that we could draw from
5 because that would have made all of our lives so
6 much easier.

7 Q The extraction you are talking about
8 is what extraction, the extraction from Mr.
9 Whitt's hard drive?

10 A No. I am talking about the melding
11 together or the retrieval of data from all the
12 sources at our disposal, which were Mr. Whitt's
13 hard drive, the paper records individually by
14 royalty year, and the process of making a
15 compendium that went claimant by year for all the
16 years and all the claimants that are at issue in
17 this proceeding.

18 Q And when did this process that you're
19 describing right now take place? I am a little
20 confused.

21 A Well I actually don't recall. I
22 remember many conversations that I had from my

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1 home office, walking around in frustration in my
2 living room. This fall, this fall -- this fall,
3 starting back in the spring, I don't, I am sorry,
4 I do not recall.

5 Q Do you recall if that was the effort
6 that was made in response to the Judges' order to
7 come up with --

8 A Oh no, I --

9 MR. OLANIRAN: Objection, Your Honor.
10 We are now wading into way outside the scope.

11 MR. BOYDSTON: Well I am just -- she
12 was explaining when this took place, and I was
13 just trying to identify --

14 THE WITNESS: No no, that conversation
15 I remember very, very clearly. That was a phone
16 call I got telling me that we had to produce an
17 electronic record, and I was embarrassed because
18 I believe the order actually said something to
19 the effect that MPAA is such a sophisticated
20 organization, we don't believe that they don't
21 have an electronic database, by which I was quite
22 chagrined.

1 (Laughter.)

2 JUDGE STRICKLER: I just want to ask
3 you a quick question so I can understand this.
4 Appendix A and Appendix B deal with
5 certification, okay?

6 THE WITNESS: Yes.

7 JUDGE STRICKLER: Were those based at
8 all on anything on Mr. Whitt's hard drive? Yes
9 or no? I am not interested in your living room.
10 Yes or no?

11 THE WITNESS: I -- well, I did not
12 know that until Ms. Plovnick just said that they
13 used data from Mr. Whitt's hard drive.

14 MS. PLOVNICK: No, just to clarify.
15 Appendix A and B are from the certification, and
16 you know, what she was talking about with the
17 Excel file was something --

18 JUDGE STRICKLER: Okay, okay, you know
19 what, I want to understand this. Exhibits A and
20 B came from what?

21 MS. PLOVNICK: The certifications.

22 THE WITNESS: Yes.

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1 JUDGE STRICKLER: And not from the
2 hard drive?

3 MS. PLOVNICK: Not from the hard
4 drive.

5 JUDGE STRICKLER: And the hard drive
6 was used to create the information that was
7 required pursuant to our order?

8 MS. PLOVNICK: Yes, Your Honor.

9 JUDGE STRICKLER: Those are two
10 distinct things.

11 JUDGE BARRETT: And perhaps some of
12 the information that is attached to the
13 certifications, but we are taking that on faith.

14 MS. PLOVNICK: Mr. Whitt did those.

15 JUDGE BARRETT: Yes.

16 MS. PLOVNICK: Yes.

17 JUDGE BARRETT: And it's his hard
18 drive.

19 JUDGE STRICKLER: Because Mr. Whitt's
20 hard drive information is derived, at least in
21 part, from the same -- from that paper, those
22 papers that Ms. Kessler had been --

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1 MS. PLOVNICK: He made the paper that
2 went to Ms. Kessler.

3 MR. OLANIRAN: And just a point of
4 clarification, Mr. Whitt -- the sheets that
5 support the certifications were delivered to MPAA
6 long before this proceeding --

7 MS. PLOVNICK: Days before.

8 MR. OLANIRAN: -- when Mr. Whitt was
9 still running his operation and he had complete
10 control of his operation.

11 MS. PLOVNICK: Very archaic, days of
12 old --

13 MR. OLANIRAN: Now the databases were
14 produced, we went scrambling for them to comply
15 with the Judges' order.

16 JUDGE STRICKLER: So if someone wanted
17 to try to impeach Ms. Saunders's Appendix A and
18 Appendix B by looking at the underlying material,
19 it's your position, then, that they should not be
20 looking at the hard -- any information on that
21 Excel spreadsheet, but they should be looking at
22 the underlying documentation itself?

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1 MR. OLANIRAN: I am so glad you put it
2 that way because that's exactly the point that I
3 was making earlier, and this is what I meant by
4 it would be a completely meaningless exercise to
5 tabulate or to organize in some form this
6 information on this Excel spreadsheet because it
7 was not the basis for Appendices A and B in Ms.
8 Saunders's accounting.

9 JUDGE STRICKLER: So I understand
10 that, and I thank you, I think I understand your
11 position. But it's IPG's position that they are
12 in a position to if not impeach the value of
13 those appendices, to question them because there
14 are other documents that were within the care,
15 custody, and control of MPAA or its agents
16 including Mr. Whitt and whomever he gave his hard
17 drive information, and to compare that
18 information with the claims that are being made
19 and representing that these copyrights really
20 weren't owned by or had an agency with those who
21 are represented on Appendices A and B.

22 You might say pay no attention to that

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1 document behind the curtain, but they want us to
2 pay every bit of attention to it, and then we
3 have to decide whether that's a good impeachment
4 or not.

5 MR. OLANIRAN: That's a fair point,
6 but Mr. Whitt was not deciding who owns the
7 copyright or not.

8 JUDGE STRICKLER: But you gave them
9 the documents, Mr. Whitt's information, and he is
10 now saying I am comparing that information to
11 what I see in your representations, and I see a
12 difference. And you're saying that difference
13 doesn't matter because that Mr. Whitt's
14 information is of no relevance.

15 MR. OLANIRAN: Well this is Mr.
16 Whitt's information long after he stopped running
17 his operation. Anything could have gone on with
18 those databases. What is most relevant is the
19 information that Mr. Whitt delivered to MPAA when
20 Mr. Whitt was running his shop and Mr. Whitt was
21 in constant communication with Ms. Kessler and
22 they were trying to figure out a way to support

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1 the -- to provide a list for the claimants to
2 sign up on to actually certify.

3 And that's what made it into the --
4 whatever may be in Mr. Whitt's database that was
5 provided this June when we were scrambling around
6 trying to figure out a way to comply with the
7 order --

8 JUDGE STRICKLER: Well you had to
9 figure out a way to comply with the order, and I
10 suppose one of the things you could have done --
11 I am not saying you did, or -- but you could have
12 said we can't comply, there is no such material
13 that exists. Instead you said --

14 MR. OLANIRAN: We said --

15 JUDGE STRICKLER: But let me finish.
16 And then you complied by saying here is
17 information that we have that complies with the
18 order and provides the necessary information
19 about the copyrights and the agents and the
20 owners, and now in some sense you are saying
21 well, yeah, we did that for you, but pay no
22 attention to what we did because we had to give

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1 you something, so we gave you a bunch of junk.

2 MR. OLANIRAN: Your Honor, it was
3 quite a frustrating experience trying to figure
4 out what to do, and I don't deny that that is --
5 that would have been one option. And we did the
6 best we could under the circumstances, knowing
7 that -- and now, and another way to look at this,
8 had we done what you said and they go in the
9 database and they see the discrepancies between
10 what we produced and -- between the hard copy of
11 the certifications and what's in that database,
12 then we may have come here arguing about the
13 discrepancies.

14 And I don't -- I think that that's a
15 fair point, but then we get arguing about well
16 why are there discrepancies? And we would still
17 be going back to look at the certifications.
18 That's what the claimants are claiming.

19 JUDGE STRICKLER: Okay. But you
20 produced that. It is in response to our order,
21 but it's in response to our order compelling for
22 the discovery, so it constitutes discovery.

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1 And so you can point out that your own
2 discovery that you produced has holes in it,
3 deficiencies in it, and you can make that
4 argument, and you are making that argument --

5 MR. OLANIRAN: We actually stated that
6 in the cover letter that went to IPG. And if you
7 look at 333, that's exactly why we make that
8 point because we know, as lawyers, we don't
9 produce discovery, and most of the work we claim
10 work product privilege on, and we had to find --

11 JUDGE STRICKLER: I am sorry to
12 interrupt you, but that raises an interesting
13 question, and I was concerned when Ms. Saunders
14 said that. She said that she dumped it all on
15 you and it was very expensive, I think that's
16 when you started talking about pulling your hair
17 out in the living room.

18 And there's no reason why that had to
19 be done. That could have been done in-house. It
20 could have been done with an outside contractor.
21 But it was given to you.

22 THE WITNESS: You're mistaken. I am

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1 so sorry, that could not have been done in-house.

2 JUDGE STRICKLER: Yeah, the choice to
3 take evidence of whatever quality and have the
4 attorneys compile the information is a choice
5 that the client makes. It is still the client's
6 discovery. And the adversarial party is free to
7 do with it as it may, and you are free to explain
8 why it may be bad information, but it was still
9 discoverable pursuant to our order. And let the
10 chips fall where they may.

11 JUDGE BARRETT: It's water way --
12 excuse me, it's water way over the dam right now
13 whether we required it or not. The fact that we
14 were incredulous in 2014 that the company didn't
15 have electronic data for this time period did not
16 require MPAA to create it, but MPAA in its own
17 interest as much as in ours, I think, and in the
18 interest of these proceedings, did the best it
19 could, okay?

20 Now, the fact that MPAA created a
21 spreadsheet and the fact that MPAA's witness
22 supplied data that didn't necessarily correlate

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1 to the spreadsheet, those are -- you know, those
2 are issues that never the twain shall meet.
3 There's a spreadsheet out there that combines
4 everything they could put their hands on, and
5 there are appendices to this witness's written
6 testimony based on paper.

7 MR. BOYDSTON: Can I just have ten
8 seconds?

9 JUDGE BARRETT: Am I correct? Yes.
10 And then we are going to leave because I have an
11 appointment.

12 MR. BOYDSTON: Well I guess I can't
13 have ten seconds.

14 JUDGE BARRETT: No, you may, Mr.
15 Boydston.

16 MR. BOYDSTON: Why didn't they give us
17 a copy of Whitt's hard drive? Why didn't they do
18 that? Why did they invent this other thing when
19 what we were asking for was exactly that?

20 JUDGE BARRETT: You know, I think --
21 well, I don't know, Mr. Boydston --

22 MR. BOYDSTON: Judge Strickler was

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1 about to ask counsel.

2 JUDGE STRICKLER: No, I believe that
3 counsel responded --

4 JUDGE BARRETT: The hard drive was on
5 a late twentieth century gadget.

6 MR. BOYDSTON: So?

7 JUDGE BARRETT: You know, I don't know
8 why they didn't.

9 MR. BOYDSTON: Those records would
10 have been responsive.

11 MR. OLANIRAN: I think I've explained
12 about as much as I can, and so two things that I
13 wanted to address. One is the status of Exhibit
14 341. I would like to move to admit 341, and then
15 I have a quick housekeeping matter.

16 MR. BOYDSTON: I have no further
17 questions for the witness. My objection remains,
18 obviously.

19 JUDGE BARRETT: Thank you. Exhibit
20 341 is admitted.

21 (Whereupon, the above-referred to
22 document was received into evidence as MPAA

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1 Exhibit 341.)

2 JUDGE BARRETT: And housekeeping
3 matter, Mr. Olaniran?

4 MR. OLANIRAN: The housekeeping matter
5 is that Ms. Saunders has an extensive travel
6 schedule coming up. I have spoken to Mr.
7 Boydston earlier today, and he had agreed that
8 Ms. Saunders could come on after we'd completed
9 the cross-examination of Mr. Galaz.

10 And Ms. Saunders wanted to be able to
11 testify first thing in the morning since first
12 she has to -- she doesn't live in town, she has
13 to travel a couple hours to get to her place of
14 residence and then pack, feed the dogs and the
15 horses and the chickens or whatever before she
16 heads out to Europe.

17 And I was really wondering if it's
18 possible -- I know that we're in the middle of
19 Mr. Galaz's cross-examination -- if I could
20 examine, if Ms. Saunders could be examined first
21 thing tomorrow morning.

22 MR. BOYDSTON: No objection.

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1 MR. MACLEAN: No objection.

2 JUDGE BARRETT: Okay. We'll do that,
3 starting at 9 o'clock.

4 MR. MACLEAN: Your Honor, may I
5 instruct my witnesses that they need not come
6 until after lunch tomorrow?

7 JUDGE BARRETT: I think that's
8 acceptable.

9 MR. BOYDSTON: Well, Your Honor, I am
10 hoping that this won't go on much longer. Could
11 you have one of them come before lunch just in
12 case?

13 JUDGE BARRETT: That's probably the
14 better part of valor, Mr. MacLean. Have at least
15 one come. Pick one.

16 MR. MACLEAN: How about, can I at
17 least tell them 11 or something to that effect?

18 MR. BOYDSTON: Why don't we say 10:30?
19 (Laughter.)

20 MR. OLANIRAN: And may Ms. Saunders be
21 excused?

22 JUDGE BARRETT: For this evening yes.

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1 And, you know, if -- well I don't -- never mind,
2 I am going to stop talking while I still can.

3 MR. OLANIRAN: Well she'll be here 9
4 o'clock tomorrow morning, Your Honor.

5 JUDGE BARRETT: Nine o'clock tomorrow
6 morning. Thank you all.

7 MR. OLANIRAN: Thank you, Your Honor.

8 MR. BOYDSTON: Thank you.

9 JUDGE BARRETT: And off the record.

10 (Whereupon, the hearing went off the
11 record at 4:40 p.m.)
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